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Toronto Railway Company

THE CHARTER

OF

The Toronto Railway Company

TOGETHER WITH SUBSEQUENT

STATUTES, AGREEMENTS and JUDGMENTS

RELATING TO THE SAID COMPANY
AND THE

Corporation of the City of Toronto

FROM APRIL 14th, 1892, TO DECEMBER 8th, 1905.

E and Abridg, 1905-1908
(inserted at back of vol.)

Prepared in accordance with the order of the Board of Control by the City Solicitor.

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TORONTO:
THE CARSWELL CO. LIMITED, 28 ADELAIDE ST. E.
1906.

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I.

55 Vic. chap. 90.

AN ACT RESPECTING THE CITY OF TORONTO.

[*Assented to 14th April, 1892.*]

* * * *

Power to issue debentures for street railway pavements.

4. The Corporation of the City of Toronto may construct, repair, renew and maintain pavements on those portions of the streets of the said City occupied by the right of way of the Toronto Railway Company (being a width for single tracks of eight feet three inches, and for double tracks of sixteen feet six inches), and to defray the cost thereof may issue local improvement debentures to be called "City of Toronto Street Railway Debentures," which debentures may be made for any period not exceeding the life of the said respective pavements as certified by the City Engineer, but in no case to be more than ten years, and the interest upon and the amount of annual sinking fund necessary to discharge the said debentures at their maturity, shall be, and continue during the currency thereof, a first charge upon all moneys received by the said City by way of mileage revenue and percentages on the receipts of and all other revenues derived from the said Toronto Railway Company. Provided that the amount of such debentures at any time outstanding shall be limited to such sum that the interest and sinking fund payable thereon in any year shall never exceed the amount receivable by the said Corporation in the said year by way of mileage revenue and percentages on the receipts of and all other revenue derived from the said Company.

Power to pave remainder of streets.

5. Pursuant to the powers contained in and according to the procedure provided by *The Municipal Act*, the said Corporation may at the same time, or at any other time, pave the remaining longitudinal sections of the said streets, and may assess the cost thereof as a local improvement upon the abutting properties pursuant to the provisions of the said Act, and in construing the said Act it shall be held that such paving is a work of the class referred to in sub-section 2 of section 612 of the said Act.

11.

55 Vic. chap. 99, as amended by 56 Vic. chap. 101; 63 Vic. chap. 102, and 4 Edw. VII. chap. 93.

AN ACT TO INCORPORATE THE TORONTO RAILWAY COMPANY AND TO CONFIRM AN AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF TORONTO AND GEORGE W. KIELY, WILLIAM McKENZIE, HENRY A. EVERETT AND CHAUNCEY C. WOODWORTH.

[*Assented to 14th April, 1892.*]

Preamble.

WHEREAS George W. Kiely, of the City of Toronto, Esquire, William McKenzie, of the City of Toronto, Contractor, Henry A. Everett, of the City of Cleveland, in the State of Ohio, Secretary of the East Cleveland Railway Company (Electric), and Chauncey C. Woodworth, of the City of Rochester, in the State of New York, Esquire, have by their petition prayed for an Act of incorporation for the purpose of enabling the company so to be incorporated to acquire and take over from them the contract or agreement made by and between the City of Toronto and the said petitioners, bearing date the first day of September, 1891, to the end, intent and purpose that the said company may carry out the said agreement with the said City of Toronto for the purchase of the street railways and properties and the street railway privilege of and belonging to the said City of Toronto and may work the said railways, and have also prayed that the said agreement may be confirmed;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Agreement confirmed.

1. The agreement between the Corporation of the City of Toronto and the said George W. Kiely, William McKenzie, Henry A. Everett and Chauncey C. Woodworth, hereinafter called "the purchasers," and the conditions and tenders therein referred to and incorporated therewith which are fully set forth in the schedule "A" to this Act, are hereby declared to be valid and legal and to be binding upon the said parties thereto, and it is hereby declared that under the said agreement the purchasers acquired and are entitled to the exclusive right and privilege of using and working the street railways in and upon the streets of the said City of Toronto, except that portion of Yonge street, north of the Ontario and Quebec Railway, and that portion of Queen street (Lake Shore Road) west of Dufferin street; and that the purchasers acquired and are entitled to such right and privilege (if any) over the said excepted portions of Queen street and Yonge street as the Corporation of the City of Toronto had at the time of the execution of the said agreement power to grant for a surface street

railway for the full period of thirty years from the first day of September, 1891, on all days except Sundays, and no longer, but subject nevertheless to all the conditions, provisoes and restrictions in the said agreement expressed or contained, and as hereinafter mentioned. Provided always that nothing contained in this Act nor the confirmation of the said agreement shall limit, interfere with, affect or prejudice the rights and privileges (if any) of the Corporation of the County of York, or of the Toronto and Mimico Electric Railway and Light Company (Limited), over the said portion of Queen Street (Lake Shore Road) or of the Corporation of the County of York, or the Metropolitan Street Railway Company of Toronto over the said portion of Yonge street, as they exist at the time of the passing of this Act; provided that notwithstanding anything in said schedule or in this Act contained, no street car shall run on the Lord's Day; and further provided that nothing herein contained shall prevent the operation of any law which may hereafter be passed by this Legislature authorizing the running of street cars on said day. But nothing herein contained shall extend to prohibit the doing of any act which is not a contravention of the *Revised Statutes chap. 203* intituled *An Act to prevent the profanation of the Lord's Day*, if and when such act shall have been approved of by the citizens by a vote taken on the question as provided by the said agreements.

Incorporation.

2. The said purchasers together with such other persons or corporations as shall become shareholders of the company hereby incorporated are hereby constituted a body corporate and politic by the name of "*The Toronto Railway Company*." hereinafter called "The Company."

Company empowered to purchase railway.

3.—(1) The Company is hereby authorized and empowered to contract and agree with the purchasers and such other person or persons (if any) who may be interested with them in the said agreement for the purchase thereof, and of all the said properties, rights and privileges, and the Company may on the grant and assignment thereof to it take and hold the same and the Company shall thereupon and thereby have vested in it all the right, title, interest, property, claim, demand and privilege of the purchasers subject, however, to all the liens, charges and obligations upon which the same were held by the purchasers.

(2) The Company may grant and issue its shares as paid-up shares in payment or on account of payment of the price agreed to be paid to the purchasers for their rights under the said contract or may give them credit on their subscriptions for shares on account thereof.

Powers of company.

4.—(1) After the said agreement has been duly assigned to the Company, it shall, subject to the provisions and conditions contained therein, have full and exclusive power to acquire, construct, complete, maintain and operate on all days except Sundays, and from time to time remove and change, a double or single track street railway, with the necessary side-tracks, switches and turn-outs, for the passage of cars, carriages and other vehicles adapted to the same, upon or along all or any of the said streets or highways of the City of Toronto, subject to the exceptions and under the qualifications contained in first section hereof, and to take, transport and carry passengers upon the same by the force and power of animals,

electricity or other motive power, in accordance with the terms of, and subject to the provisions of the said agreement, and to construct and maintain and from time to time alter, repair and enlarge all necessary and convenient works, stations, buildings and conveniences therewith connected or required for the due and efficient working thereof, and to purchase, acquire, construct or manufacture all engines, carriages, cars and other machinery and contrivances necessary for the purposes of the undertaking, and shall have full power to carry out, fulfil and execute the said agreement and conditions.

(2) If the City of Toronto desire to exercise the right of taking over the property necessary to be used in the working of the railways at the termination of the said period of thirty years it shall, not less than twelve months prior thereto, give to the purchasers or the Company, as the case may be, notice of its intention so to do.

(3) After the said City of Toronto shall have given notice of its intention to take over the said property, it may at once proceed to arbitrate under the conditions in that behalf and both the City and the purchasers or the Company, as the case may be, shall in every reasonable way facilitate such arbitration, and the arbitrators appointed in the matter shall proceed so as, if possible, to make their award not later than the time named by the City for taking over the said property. But if from any cause the award shall not be made by such time or if either party be dissatisfied with the award, the City may nevertheless take possession of the said railways and all the property and effects thereof real and personal necessary to be used in connection with the working thereof on paying into Court either the amount of such award, if the award be made, or if not upon paying into Court or to the purchasers or company, as the case may be, such sum of money as a judge of the High Court of Justice may, after notice to the opposite party, order, and upon and subject and according to such terms, stipulations and conditions as the said Court shall by its order direct and prescribe, provided always that the rights of the parties except in so far as herein specially provided shall not be affected or prejudiced thereby. In determining such value the rights and privileges granted by the said agreement and the revenue, profits and dividends being or likely to be derived from the enterprise are not to be taken into consideration, but the arbitrators are to consider only the actual value of the actual and tangible property, plant, equipments and works connected with and necessary to the operation of the railways which is not to include any land, property or rights acquired or used in connection with the said street railway, and which do not actually form a part of the said street railway undertaking necessary to the carrying on of the same.

(4) In arriving at such value the arbitrators are to consider and award only the value of the said several particulars to the City at the time of the arbitration, having regard to the requirements of a railway of the best kind and system then in operation and applicable to the said City.

(5) In the event of the City, at the expiration of the thirty years in the first section of this Act mentioned, not exercising its right to take over the real and personal property necessary to be used in connection with the working of the

said railways, the City may, at the expiration of any succeeding year thereafter, exercise such right upon giving not less than six months' notice to the Company, and the privileges of the company shall continue until the City exercises such right; provided always that whenever the City shall exercise such right of taking over the said property the provisions for determining the value thereof herein contained shall apply in the same manner as if the City had exercised its right at the expiration of the said period of thirty years.

Power of company as to acquiring land.

5. The Company shall have power and authority to purchase, hold and take by purchase of any corporation or person any lands or other property necessary for the construction, maintenance, accommodation and use of the undertaking, and also to alienate, sell or dispose of the same, but all such lands within the City of Toronto shall be held subject to the conditions of the said agreement.

Company authorized to enter into agreement with city.

6.—(1) The Company is hereby authorized to enter into and execute a contract or agreement with the Corporation of the City of Toronto for the purpose of assuming the contract and the covenants, agreements and obligations which the said purchasers in and by their said agreement with the said City of Toronto agreed to do, perform, fulfil and execute; and upon such agreement, which may be in the form and to the effect set forth in schedule "B" to this Act, being executed by the Company and delivered to the City, the Company shall be substituted for the purchasers and the purchasers shall be forever freed and discharged of and from all and every covenant condition, and obligation entered into by them in and by the said agreement forming schedule "A" to this Act.

(2) Notwithstanding anything in the said agreement or in this Act contained, all school taxes and rates payable by the said Company shall be subject to and be governed by the general law respecting school taxes of incorporated companies as to all holders or owners of the stock thereof other than the present owner or holders.

Capital stock.

7. The capital stock of the Company shall be $1,000,000 divided into 10,000 shares of $100 each.

Head office.

8. The head office of the Company shall be in the City of Toronto, in the Province of Ontario.

Provisional directors.

9. The persons mentioned by name in the first section of this Act are hereby constituted provisional directors of the Company, and shall hold office as such until other directors shall be elected under the provisions of this Act by the shareholders and shall have power and authority to open stock books, and to procure subscriptions for the undertaking, and to call a general meeting of the shareholders for the election of directors, as hereinafter provided; and the said provisional directors, or a majority of them, may in their discretion exclude any person from subscribing.

Rights of aliens.

10. Aliens and companies incorporated abroad, as well as British subjects and corporations, whether resident in this Province or elsewhere, may be shareholders in the Company, and all such shareholders shall be entitled to vote equally

with British subjects, and shall also be eligible for office as directors of the Company.

Qualifications of directors.

11. No person shall be elected a director unless he shall be the holder and owner of at least ten shares of the stock of the Company, upon which all calls have been paid.

First general meeting and election of directors.

12. When, and so soon as shares to the amount of $100,000 of the capital stock of the Company shall have been subscribed, and ten per cent. thereof shall have been paid in to one of the chartered banks of the Dominion, having an office in the Province of Ontario, the provisional directors shall call a general meeting of subscribers for the purpose of electing directors, giving at least ten days' notice in the *Ontario Gazette*, and in one newspaper published in the City of Toronto, of the time, place and object of the said meeting; and at such general meeting the shareholders present, either in person or by proxy, who shall at the opening of such meeting have paid ten per cent. on the stock subscribed by them, shall elect five persons to be directors of the above Company in manner and qualified as hereinbefore described; and the sum so paid shall not be withdrawn from the bank, except for the purposes of this Act.

Subsequent annual meeting.

13. Thereafter the general annual meeting of the shareholders of the Company for the election of a board of five directors, and the transaction of other business connected with, or incident to the undertaking, shall be held at the head office of the Company, or elsewhere as the directors may deem most convenient on such day and at such hour as may be directed by the by-laws of the Company, and public notice thereof shall be given at least four weeks previously in the *Ontario Gazette* and once a week for the same period in some newspaper published in the City of Toronto.

Special general meetings.

14. Special general meetings of the shareholders of the Company may be held at such places, and at such times, and in such manner, and for such purposes as may be provided by the by-laws of the Company upon such notice as is provided in the last preceding section.

Management of company.

15. The affairs of the Company shall be managed by the board of directors, a majority of whom shall constitute a quorum.

Incorporation of Rev. Stat. c. 171, s. 16, sub-s. 1, 2 and 3.

16. Sub-sections 1, 2 and 3 of section 16 of *The Street Railway Act* are hereby incorporated herein and made part of and are to be considered as sections of this Act and are to apply to the acquisition by the Company of sites for power, buildings, and other necessary privileges.

Fares.

17. The fare of every passenger shall be due and payable on entering the car or other conveyance of the Company, and any person refusing to pay the fare when demanded by the conductor or driver, and refusing to quit the car or other conveyance when requested so to do, shall be liable to a fine of not more than $10, beside costs, and the same shall be recoverable before any Justice of the Peace.

18. Section 34 (except so much of sub-section 15 thereof as is prohibitive of a person being chosen a director by reason of his holding any office, place or employment in the Company), sections 35, 36, 37, and 42 of *The Railway Act of Ontario*, shall be incorporated with and be deemed and taken to be clauses or sections and parts of this Act, and shall apply to the Company when not inconsistent with the provisions herein, and wherever in the said sections of *The Railway Act* the words "special Act" occur they shall mean this Act. Certain provisions of Rev. Stat. c. 170, incorporated.

19.—(1) The Company shall have power by and with the consent of any of the local municipal corporations in the County of York to acquire privileges, to build and operate surface railways on all days except Sundays within the limits of such municipalities, over roads within their jurisdiction, by electric or other motive power, and upon such terms and conditions and for such periods but not to extend beyond the 31st day of August, 1921, as may be agreed upon between the Company and such local municipal corporation, subject to the rights and privileges which any other company or corporation may be entitled to for or in respect of a surface street railroad within the limits of the said municipality. Power to operate street railways.

(2) And the said local municipal corporations respectively are hereby authorized and empowered to make and enter into such agreements.

(3) Upon the acquisition of such privilege the Company shall have power to construct, build and operate a railway or railways in such municipality or municipalities, over roads within their jurisdiction, in respect of which such privilege has been acquired, subject to the terms and conditions that may be contained in any such agreement or agreements, and subject as aforesaid.

(4) Provided always that if any such local municipality or any part thereof shall be annexed to the City of Toronto during the said period of thirty years or any extension thereof as hereinbefore provided the railway or railways belonging to the Company constructed within the said local municipality or such part thereof as may be annexed as aforesaid and the working thereof, and the Company in relation thereto shall have all the rights conferred by and be subject to all the terms and conditions of the said agreement (being schedule "A" to this Act) and shall be released and discharged from all agreements, covenants and conditions to the said local municipality so far as the said railway or railways are within the said City.

20. The Company shall also have power to enter into agreements with any other company or corporation owning a privilege for the operation of a surface railway within the limits of the said local municipalities to acquire or lease any such privilege, or to make traffic or operating arrangements with any such company or corporation upon such terms and conditions as the board of directors of the contracting companies or corporations may fix and agree, but every such agreement or arrangement must be sanctioned at a special general meeting of the shareholders of the Company called for the purpose of considering the same by a vote of at least two-thirds in value of all the shareholders of the Company. Agreements with other companies, &c.

Acquiring lands for park purposes.

21. The Company shall also have power by and with the consent of the councils of the respective municipalities to acquire and hold any lands or premises or any estate or interest therein for park or pleasure grounds and for no other purpose within the limits of the City of Toronto or any of the said local municipalities, and the said Company is authorized to improve and lay out such lands or premises for parks or places of public resort, to be used on all days except Sundays, and to mortgage or lease the said lands or premises or any portion thereof as they may think expedient and to sell from time to time such portions of such lands as they may deem unnecessary for the said purposes.

(1) Provided always that the land to be held as aforesaid shall not exceed 300 acres, and not more than 100 acres in one locality, and it is hereby declared that any land or premises, estate or interest therein which may be acquired by the Company under the provisions of this section shall not be property which the City in taking over the real and personal property of the Company at the expiration of the said period of thirty years or any extension thereof shall be bound to acquire. Provided moreover, that the Company shall not under this section have power to acquire any lands after the lapse of seven years after the passing of this Act; and provided also that nothing in this section contained shall be deemed to enable the Company to carry on the general business of a land company.

Bonding powers.

22.—(1) The directors of the Company, under the authority of the shareholders to them given at any special general meeting called for the purpose and in the manner provided by this Act, at which meeting shareholders representing at least two-thirds in value of the subscribed stock of the Company, and who have paid all calls due thereon, are present in person or represented by proxy, may, subject to the provisions in this Act contained, issue bonds, debentures or other securities signed by the president or other presiding officer, and countersigned by the secretary, which counter-signature and the signature of the coupons attached to the same may be engraved; and such bonds, debentures or other securities may be made payable at such time not exceeding, however, in any case the expiration of thirty years from the 1st day of September, 1891, and in such manner and at such place or places in Canada or elsewhere, and may bear such rate of interest not exceeding six per cent. per annum as the directors think proper:—

(*a*) The directors may issue and sell or pledge all or any of the said bonds, debentures or other securities at the best price and upon the best terms and conditions, which at the time they may be able to obtain, for the purpose of raising money for prosecuting the said undertaking.

(*b*) No such bond, debenture or other security shall be for a less sum than one hundred dollars.

(*c*) The power of issuing bonds conferred upon the Company hereby shall not be construed as being exhausted by such issue, but such power may be exercised from time to time upon the bonds constituting such issue being withdrawn or paid off and duly cancelled.

(2) The Company may secure such bonds, debentures or other securities by a mortgage deed creating such mortgages, charges and incumbrances upon the whole of such property, assets, rents and revenues of the Company, present or future, or both, as are described in the said deed, but such rents and revenues shall be subject in the first instance to the payment of the working expenses of the undertaking.

(*a*) By the said deed the Company may grant to the holders of such bonds, debentures or other securities, or the trustees named in such deed, all and every the powers, rights and remedies granted by this Act in respect of the said bonds, debentures or other securities, and all other powers, rights and remedies not inconsistent with this Act, or may restrict the said holders in the exercise of any power, privilege or remedy granted by this Act, as the case may be; and all the powers, rights and remedies so provided for in such mortgage deed shall be valid and binding and available to the said holders in manner and form as therein provided.

(*b*) Every such mortgage deed shall be deposited in the office of the Provincial Secretary, of which deposit notice shall be given by the Company in the *Ontario Gazette*.

(3) The bonds, debentures or other securities hereby authorized to be issued, shall be taken and considered to be the first preferential claim and charge upon the Company, and the privileges acquired under the said agreement by this Act confirmed, and the undertaking, tolls and income, rents and revenues, and real and personal property thereof at any time acquired, save and except as provided for in the next preceding sub-section:—

And save and except the bonds or debentures for $600,000 issued by the Toronto Street Railway Company referred to in the said agreement so far as the same are now a charge on the undertaking and subject to the charges in favor of the City provided by the said agreement.

(*a*) Each holder of the said bonds, debentures or other securities shall be deemed to be a mortgagee or incumbrancer upon the said securities *pro rata* with all the other holders, and no proceedings authorized by law or by this Act shall be taken to enforce payment of the said bonds, debentures or other securities, or of the interest thereon, except through the trustee or trustees appointed by or under such mortgage deed.

(4) If the Company makes default in paying the principal of or interest on any of the bonds, debentures or other securities hereby authorized, at the time when the same, by the terms of the bond, debenture or other security, becomes due and payable, then at the next annual general meeting of the Company, and at all subsequent meetings, all holders of bonds, debentures or other securities so being and

remaining in default shall, in respect thereof, have and possess the same rights and privileges and qualifications for being elected directors and for voting at general meetings as would attach to them as shareholders if they held fully paid up shares of the Company to a corresponding amount.

(*a*) The rights given by this sub-section shall not be exercised by any such holder unless it is so provided by the mortgage deed, nor unless the bond, debenture or other security in respect of which he claims to exercise such rights, has been registered in his name, in the same manner as the shares of the Company are registered, at least ten days before he attempts to exercise the right of voting thereon, and the Company shall be bound on demand to register such bonds, debentures or other securities, and thereafter any transfers thereof, in the same manner as shares or transfers of shares.

(*b*) The exercise of the rights given by this sub-section shall not take away, limit or restrain any other of the rights or remedies to which the holders of the said bonds, debentures or other securities are entitled under the provisions of such mortgage deed.

(5) All bonds, debentures or other securities hereby authorized may be made payable to bearer, and shall in that case be transferable by delivery, until registration thereof as hereinbefore provided, and while so registered they shall be transferable by written transfers, registered in the same manner as in the case of the transfer of shares.

Limit of bonding powers.

23. The issue of bonds, debentures or other securities by this Act authorized, shall not exceed the sum of $35,000 for each mile of street railway track constructed or under contract for construction *at any time; inclusive of their tracks constructed or under contract for construction over any lands acquired, or which may be acquired for the purposes thereof, and also of their tracks constructed or under contract for construction authorized by section 19 of this Act.* Provided that such bonds, debentures or other securities shall not in any way interfere with or prejudice the right of the City in case it chooses to exercise its right to take over the undertaking in pursuance and on the terms of the said agreement, in which case the said bonds, debentures or other securities shall cease to be a charge on the undertaking, but they shall nevertheless be a charge on any moneys to be paid by the City therefor. *56 Vic. chap. 101, sec. 1.*

Application of proceeds of bonds.

24.—(1) Whereas among the terms embodied in the Conditions referred to in the said agreement it is stipulated that the purchasers are to satisfy the Treasurer of the said City, that means are provided for meeting the payment of such bonds or debentures as the Company may issue at the maturity thereof, and it is expedient to substitute in lieu of such stipulations the following provision:—It is therefore enacted that the net proceeds of all or any of such bonds or debentures issued in pursuance of the power by this Act conferred shall be laid out and expended in the purchase or acquisition of the rails, rolling stock, motor, buildings and lands required therefor, and other necessary plant, fixtures and materials and in the laying

of such rails and erection of such plant, and in execution and fulfilment of the conditions of the said contract or agreement for the change of the system entered into by the said purchasers to be assumed by the Company as hereinbefore provided, *and in carrying out and completing the undertaking, and in the acquisition of such privileges and the construction of such lines and works as may be required to enable the Company to run their cars to points beyond the limits of the City of Toronto, provided that the aggregate distance of such points from said limits shall not exceed fifteen miles, and that no one part of such aggregate shall exceed five miles; but the proceeds of such bonds shall not be devoted to the acquisition of the privileges owned by any other company or corporation for the operation of surface railways in the County of York, without the consent first obtained in writing of the trustees to be named in the mortgage deed. Nothing herein contained shall impair or affect the rights of the said City or the obligations of the Company under section 16 of the agreement forming Schedule "A" to the Act passed in the 55th year of Her Majesty's reign and chaptered 99. 56 Vic. chap. 101, s. 2.*

(2) It is hereby declared that all bonds, debentures or other securities at any time issued by the said Company shall forthwith, after the issue thereof, be handed over to trustees to be named in the mortgage deed, which, under the provisions of the twenty-second section of this Act the Company is authorized and empowered to grant, for the purpose of securing such bonds, debentures or other securities, and shall only apply the same from time to time under the provisions of sub-section 1 of this clause, and as such payments may be earned by the actual expenditure of money for the purposes therein set forth and in discharge of the said $600,000 of bonds or debentures.

Company not to deposit snow or ice on highways.

25. And whereas doubts have arisen as to the construction and effect of sections 21 and 22 of the said conditions, it is hereby declared and enacted that the said Company shall not deposit snow, ice or other material upon any street, square, highway, or other public place in the City of Toronto without having first obtained the permission of the City Engineer of the said City or the person acting as such.

Negotiable instruments.

26. The said Company shall have power and authority to become parties to promissory notes and bills of exchange for sums not less than one hundred dollars, and any such promissory note or bill of exchange made, accepted or endorsed by the President or Vice-President of the Company, and countersigned by the Secretary and Treasurer of the Company, shall be binding on the Company, and every such promissory note or bill of exchange so made shall be presumed to have been made with proper authority until the contrary be shown, and in no case shall it be necessary to have the seal of the Company affixed to such promissory note or bill of exchange; provided, however, that nothing in this section shall be construed to authorize the said Company to issue notes or bills of exchange payable to bearer, or intended to be circulated as money, or as the notes or bills of a bank.

Meaning of "Street," "The Lands," "The Undertaking."

27. In this Act "Street" shall include any highway; "The Lands" shall mean the lands which by the special Act are authorized to be taken and used for the purpose thereof; "The Undertaking" shall mean the railway, and works of whatever description, by the special Act authorized to be executed.

Enforcing agreements, etc., between Toronto Railway Company and the City of Toronto.

28. *In case of neglect or failure either on the part of the Toronto Railway Company or on the part of the Corporation of the City of Toronto, to perform any of the covenants, agreements, obligations or provisions contained in the said Act, and in the said agreement and conditions incorporated therewith, and in case either the Corporation of the City of Toronto or the Toronto Railway Company shall bring an action to compel the performance of or to restrain the violation of any of the said covenants, obligations, agreements or provisions, the Court before whom the action shall be tried shall enquire into any such alleged breach, and the nature and extent thereof, and shall make such order as may be necessary in the interests of justice to enforce a substantial compliance with the said Act, agreement and conditions, and may enforce the same by the order and injunction of the Court. 63 Vict. chap. 102, s. 1.*

Penalty for default in service.

29. *In the event of the said Company neglecting or refusing to give a service of cars reasonably complying with the provisions of the said agreement and conditions, the Company shall, in addition to any other remedies provided by law, be liable to pay to the City for such neglect or refusal the sum or sums of $100 for each day they shall so neglect or refuse, which sum or sums may be recovered in an action by the said Corporation in any Court of competent jurisdiction. Such sums or amounts are hereby declared to be in the nature of liquidated damages and shall be so held in any action for the recovery thereof; provided that the provisions of section 46 of the Conditions forming part of the schedule to said Act shall not apply to any such neglect or refusal; provided further that any neglect or refusal caused by fire, strikes, civil commotion, the act of God or the King's enemies, shall not be within the provisions hereof. 4 Edw. VII. chap. 98, s. 3.*

Proviso.

Proviso.

SCHEDULE "A."

(*Section 1.*)

This Indenture made (in triplicate) the first day of September, one thousand eight hundred and ninety-one.

Between the Corporation of the City of Toronto, hereinafter called the "Corporation," of the first part; and George Washington Kiely, of the City of Toronto, Esquire; William McKenzie, of the City of Toronto, contractor; Henry Azariah Everett, of the City of Cleveland, in the State of Ohio, Secretary of the East Cleveland Railway Company (Electric), and Chauncey Clark Woodworth, of the City of Rochester, in the State of New York, Esquire, hereinafter called "the purchasers," of the second part.

1. Whereas by virtue of an Act of the Legislature of the Province of Ontario, being 52 Victoria, chapter 73, intituled *An Act respecting the City of Toronto*, the Corporation of the City of Toronto was empowered, after having acquired the ownership of the railways of the Toronto Street Railway Company and all the real and personal property in connection with the working thereof, to sell, lease

or otherwise dispose of the same to any one or more persons, firms or corporations on such terms and for such periods as might be agreed upon between the City and the said persons, firms or corporations;

2. And whereas under and by virtue of another Act of the said Legislature, being 53 Victoria, chapter 105, the said Corporation was empowered to proceed to arbitration under the 18th resolution of the agreement therein referred to in order to determine the value to be paid by the said Corporation to the Toronto Street Railway Company for the said railways and the said real and personal property;

3. And whereas the Corporation proceeded with the said arbitration, and an award was duly made therein on the 15th day of April, A.D. 1891, whereby the said value was determined to be the sum of $1,453,788 inclusive of certain outstanding debentures charged upon the said undertaking to the amount of $600,000;

4. And whereas the Corporation paid into the High Court of Justice, Chancery Division, the amount of the said award and acquired the said railways and property and is now in possession and full enjoyment thereof;

5. And whereas the said Corporation resolved to sell the said railways and all the property so acquired by the City from the Toronto Street Railway Company, and also to dispose of the right to operate surface street railways in the City of Toronto as hereinafter mentioned, as more fully appears from the said award and from the conditions, tender and by-law which are annexed to this agreement and made part and parcel thereof;

.6 And whereas the Corporation advertised for tenders for the purchase of the said railways, property and privilege, and the Purchasers (Kiely, McKenzie & Everett), tendered therefor and their said tender was duly accepted by the said Corporation;

7. And whereas a by-law authorizing the execution of an agreement between the Corporation and the said Purchasers was duly passed by the said Corporation on the 27th day of July, A.D. 1891, in pursuance whereof this agreement has been duly prepared and approved;

8. And whereas the said Purchasers have associated with them the said Chauncey C. Woodworth as a partner in the said undertaking;

9. And whereas the value of the horses, cars, harness, stock and other movable property and effects referred to in the fifth paragraph of the said conditions and payable in cash has been settled for the purposes of this agreement at the sum of $475,000, and it has been agreed by and between the said parties that a first lien or charge shall be created by these presents upon all the property which is the subject of this agreement, and shall be held by the Corporation thereon for the

balance (namely, for the sum of $378,788 and interest), of the amount of the said award, subject only to the charge created by the said debentures to the extent of $600,000 with interest;

10. Now this indenture witnesseth that the said Corporation, in consideration of the said sum of $475,000 now paid by the Purchasers to the Corporation (the receipt whereof is hereby acknowledged) and of the premises, doth by these presents in pursuance of all the powers in that behalf enabling it so to do, sell, grant, and assign to the Purchasers, their heirs, executors, administrators and assigns, all the said railways and property acquired by the Corporation from the Toronto Street Railway Company as aforesaid under and in pursuance of the said arbitration and award; and also all the extensions, additions and renewals to the said railways and property, real and personal, made by the Corporation during its ownership of the railway; subject to the said outstanding debentures and to the said charge above referred to, and to all the conditions herein mentioned. To have and to hold to the Purchasers, their heirs, executors, administrators and assigns, to their sole and only use, subject as aforesaid;

11. And this indenture further witnesseth that the Corporation for the considerations aforesaid doth by these presents, in pursuance of all the powers in that behalf enabling it so to do, grant unto the said Purchasers, their heirs, executors, administrators and assigns for a period of twenty years from the date of these presents (which period shall be renewed for a further term of ten years, and no longer, in the event of legislation being obtained to enable this to be done, the said Corporation hereby undertaking at once on request being made by the said Purchasers to aid in procuring the needed legislation to authorize such renewal for such further period of ten years) the exclusive right for the said period of twenty years and the said extended period of ten years, in the event of the said needed legislation being obtained, and no longer, upon the aforesaid conditions to operate surface street railways in the City of Toronto, excepting on the Island and on that portion, if any, of Yonge street from the Ontario and Quebec railway tracks to the north City limits over which the Metropolitan Street Railway claims an exclusive right to operate such railways, and the portion, if any, of Queen street west (Lake Shore Road) over which any exclusive right to operate surface street railways may have been granted by the corporation of the County of York, and also the exclusive right for the same term to operate surface street railways over the said portions of Yonge street and Queen street west (Lake Shore Road) above indicated so far as the said Corporation can legally grant the same; but this clause and nothing contained in this agreement shall give or be construed to mean or give to the Purchasers the power to engage in any other business than that of operating surface street railways as herein permitted.

12. And it is mutually understood, declared and agreed by and between the Corporation and its successors and the Purchasers, their heirs, executors, administrators and assigns, that the said award, conditions, tender and by-law so attached hereto as aforesaid, are incorporated with these presents and made part and parcel thereof, and the said parties mutually and respectively covenant, promise and

agree with each other to carry into effect, observe, perform and fulfil all the provisions and stipulations therein contained and to be carried into effect, observed, performed and fulfilled by the said parties and their aforesaids respectively.

13. And the said Purchasers for themselves, and each of them for himself, and for their and each of their heirs, executors, administrators and assigns, covenant, promise and agree with the Corporation, their successors and assigns, as follows: that they will fulfil all the conditions, stipulations and undertakings in this agreement contained, it being understood that the reference to particular matters to be performed by the Purchasers shall not diminish or limit the obligations of this agreement.

14. The said Purchasers and their aforesaids covenant as aforesaid with the said Corporation, that they will pay to the said Corporation the said sum of $378,788, being the balance of the said award, in four equal quarterly payments on the first days of December, March, June and September next, or the first juridical day thereafter, respectively, with interest at the rate of 5 per cent. per annum from the date of this agreement, on the amount thereof then remaining unpaid.

15. And that they will yearly and every year during the term covered by this agreement, pay to the Corporation through its City Treasurer the sum of $800 per annum per mile of single track, or $1,600 per mile of double track, occupied by the rails of the said railways within the said limits (not including turnouts, the length of which are to be approved of by the City Engineer), in four equal quarterly instalments on the first days of January, April, July and October in each year, or on the first juridical day thereafter respectively, the first instalment to be the proportionate part of the quarterly instalment accruing from the date of these presents to the first day of October next.

16. And that they will monthly, and every month during the term covered by this agreement, on the first Monday of each month, pay to the Corporation through its City Treasurer, the percentages in the said conditions and tender referred to, being the following percentages of the gross receipts from passenger fares, freight, express and mail rates, and all other sources of revenue derived from the traffic obtained by the operation of the said railways, namely;—

On all gross receipts up to			$1,000,000	per annum,	8%
Between	$1,000,000	and	1,500,000	"	10%
"	1,500,000	and	2,000,000	"	12%
"	2,000,000	and	3,000,000	"	15%
And on all gross receipts over			3,000,000	"	20%

17. And it is further understood, declared and agreed between the parties to these presents, that should the Corporation within a reasonable time eliminate from clause 31 of the said conditions, the provision requiring a class of tickets to be sold at the rate of 8 tickets for 25 cents, for use during certain specified hours of the day, then, and in that event, the said Purchasers for themselves, their

executors, administrators and assigns, covenant, promise and agree with the Corporation and their successors that they will in accordance with their said tender in that behalf, pay to the Corporation and its successors during the unexpired period of the said term covered by this agreement two (2) per cent of the said gross receipts, in addition to the percentages hereinbefore mentioned, such additional percentages to be payable monthly as aforesaid.

18. The Purchasers, in addition to the other considerations payable to the Corporation for the said railways and property, shall pay to the Corporation the following items, viz.:

(1) The actual cost to the Corporation of the extensions and additions to the tracks, made by the Corporation since the acquisition thereof.

(2) The actual cost to the Corporation of additions to plant and materials for the use of said railway handed over to the Purchasers.

(3) The actual cost to the Corporation of the new horses purchased since the railway has been acquired.

(4) One-half of the actual cost to the Corporation of the painting, renovating and other repairing done to the cars, plant and appliances of the railway since the acquisition thereof from the said street railway company.

19. The Purchasers covenant that they will well and truly pay to the holders of said hereinbefore mentioned debentures as they mature the said sum of $600,000, thereby secured and interest thereon from the date of these presents, and will indemnify and save harmless the Corporation from all claims and demands in respect thereof.

20. That they will build and equip or cause to be built and equipped a car factory, within the limits of the City of Toronto, for the manufacture and repair of all the cars and railway plant used on the said railways, and will there continuously carry on, or cause to be carried on, such business, and the manufacture and repair of all the said cars and railway plant during the term covered by this agreement, and that the performance of this clause may be specifically enforced by the order and injunction of the High Court of Justice.

21. And it is hereby agreed that all the said railway property liable to be assessed for school purposes, shall be assessed for public school purposes, and that the rates levied in respect thereof, shall be payable to the public school funds of the City of Toronto.

22. And it is further understood, declared and agreed between the said parties to these presents that the delivery over and acceptance of the said property shall not interfere with the rights of the parties under clause three of the said conditions, but that notwithstanding this act the Judge of the County Court of the

County of York shall settle any difference that may arise between the parties in respect thereof, and the sum so settled by him shall be forthwith paid by the party liable to the party to whom the same is found due.

23. And it is further understood, declared and agreed by and between the said Corporation and the said Purchasers that if the said Purchasers form a joint stock company for the purpose of carrying this agreement into effect then, upon payment of the said sum of $378,788, and interest as aforesaid, the said Company shall, upon executing the necessary contract of substitution be substituted for the said Purchasers, and the said clause 23 of the said conditions shall apply to such company so to be formed as aforesaid, and shall cease to apply to the individual purchasers, who shall thenceforward be discharged from all individual liability in the premises.

24. And it is further declared, covenanted and agreed by and between the parties to these presents that all the property the subject of this agreement is hereby charged with the payment of all the moneys to be paid under this agreement as the purchase money of the said property.

25. And it is further covenanted and agreed by and between the parties to these presents that the payment of the said gross percentages monthly, and mileages quarterly, and the fulfilment of the obligations of the said conditions shall be a lien and charge on the said railways and the property used in the working thereof, both before and after the incorporation of the said Company intended to be substituted as aforesaid in the place of the said Purchasers, but this provision shall not interfere with the right of such Purchasers or of the said Company after the payment of the purchase moneys as aforesaid to sell and dispose of any property which is not required for the operation of the said railways; all the property however which replaces that which may be sold or disposed of is to be charged under this clause as the original property is now hereby charged, and all after acquired property is to be in the same manner charged for the fulfilment of the said obligations.

26. And it is further covenanted and agreed by and between the parties to these presents, that a sufficient supply of each of the classes of tickets mentioned in the said conditions, shall at all times be kept for sale, and sold to all persons desirous of purchasing the same, on all cars while running through the streets of the City, and also at the public offices of the purchasers.

27. And it is further understood, declared and agreed by and between the said parties that in fixing the allowance to be made for horses which have been sold by the Corporation, and therefore not forthcoming under the provision in clause 3 of the said conditions, the Corporation shall only be liable to account for and pay the price realized on such sales.

28. And it is further understood, declared and agreed by and between the said parties, that the system of accounts and bookkeeping to be adopted by the Purchasers shall be subject to the approval of the City Treasurer and the auditors appointed by the City.

29. And it is further covenanted and agreed between the parties to these presents that all conveyances, assurances and instruments necessary to carry out fully these presents shall from time to time be executed by the parties hereto, the same to be settled by James S. Cartwright, Q.C., Registrar of the Queen's Bench Division of the High Court of Justice, in case the parties differ about the same.

30. All outstanding car-fare tickets issued by the Corporation or by the Toronto Street Railway Company prior to the date hereof shall be accepted as fares by the Purchasers when presented by passengers on the conveyances of the said railways subsequent to the date hereof; and the Corporation agrees that upon such tickets being returned to it from time to time, it will pay to the Purchasers the same prices therefor for which such tickets were issued by the Corporation and said Toronto Street Railway Company respectively.

In witness whereof the said Corporation has hereto affixed its corporate seal, under the hand of Edward Frederick Clarke, Esquire, Mayor of the said City, and Richard Theodore Coady, Esquire, City Treasurer and keeper of the said seal, and the said Purchasers have set their respective hands and seals.

Signed, sealed and delivered in the presence of

THOMAS CASWELL,

GEO. KAPPELE.

[SEAL].

E. F. CLARKE,
Mayor.

R. T. COADY,
Treasurer.

G. W. KIELY.

WILLIAM MCKENZIE.
By his Attorney,
Nicol Kingsmill,

H. A. EVERETT.

C. C. WOODWORTH.

[SEALS.]

THE AWARD, CONDITIONS, TENDER AND BY-LAW.

Referred to in the agreement hereto attached, dated the first day of September, 1891, between the Corpor .tion of the City of Toronto and George Washington Kiely, William McKenzie, Henry Azariah Everett and Chauncey Clark Woodworth.

Conditions of sale of the Street Railway Franchise of the City of Toronto, as adopted by the City Council May 5th, 1891.

1. The privilege to be disposed of is the exclusive right (subject as hereinafter provided) to operate surface street railways in the City of Toronto—excepting on "the Island" and on that portion (if any) of Yonge street, from the Ontario and Quebec railway tracks to the north City limits, over which the Metropolitan Street Railway Company claims an exclusive right to operate such railways, and the portion (if any) of Queen street west (Lake Shore Road) over which any exclusive right to operate surface street railways may have been granted by the Corporation of the County of York—for a period of twenty years, which sh.ll be renewed for a further period of ten years in the event of legislation being obtained to enable this to be done; and the City will assist in endeavouring to secure such legislation.

(*a*) Over those portions of Yonge street and Queen street west (Lake Shore Road) above indicated, the purchaser shall have an exclusive right to operate surface street railways, so far as the City can legally grant the same.

2. The party whose tender is accepted (and who is herein called "the purchaser") must take over all the property to be acquired by the City from the Toronto Street Railway Company, as it stands on the date of the acceptance of the tender, including the rails, points and substructures of all tracks now laid, real estate, buildings, shops, rolling stock, horses, machinery, stock and all other articles covered by the award of the board of arbitrators at the amount of said award.

3. Particulars of the said property are set forth in the schedule attached to the award of the said board of arbitrators; but the City will only undertake as to the tracks actually constructed and the real estate, buildings and shops that all of the articles mentioned in said schedule will be forthcoming.

(*a*) The City will convey and deliver to the purchaser and the purchaser shall take over and pay for all the property and effects (whether mentioned in said schedule or otherwise) w.:.n the City acquires from the Toronto Street Railway Company under the said award, and if anything mentioned in said schedule is not forthcoming, or if anything is acquired by the City, as aforesaid, which is not specified in said schedule, the purchase money to be paid as herein provided shall be subject to such increase or abatement as may be agreed upon between the City and the purchaser, or (in case they fail to agree within ten days after acceptance of tender) as shall be fixed by the Judge of the County Court of the County of York, who is hereby appointed sole arbitrator for that purpose, with all the powers of arbitrators appointed under the sections of *The Municipal Act* relating to the appointment of arbitrators.

4. The purchaser must accept the title to the above properties which the City acquires or will acquire by virtue of the award of the arbitrators, and must search the same at his own expense, and the City is not to be bound to produce or show any documents or evidences of title except such as are in its possession or power.

5. The sum tendered for the above properties, except horses, cars, harness, stock and other movable properties and effects (which are to be paid for in cash at the time the contract is entered into) may either be paid in cash or secured to the satisfaction of the City Treasurer, and paid in four equal quarterly payments, counting from the date of contract, and bearing interest at the rate of 5 per cent. per annum from May 16th, 1891, till paid.

N.B.—There is outstanding $600,000 debentures issued under the authority of the Act 47 Vic. (Ont.) chap. 77, bearing interest at 6 per cent. per annum, payable half-yearly, and forming a charge upon the undertaking as in said Act is provided. These debentures do not mature until 1914. The purchaser takes the property subject to this charge, and also to certain existing mortgages amounting to about $40,000 and assumes payment of these with the interest accruing thereon from date of purchase.

6. The purchaser shall not charge the undertaking with bonds or debentures for a longer period than the term of this contract, and must satisfy the City Treasurer that means are provided for meeting such obligations at maturity.

7. At the termination of this contract the City may (in the event of the Council so determining) take over all the real and personal property necessary to be used in connection with the working of the said railways, at a value to be determined by one or more arbitrators (not exceeding three) to be appointed as provided in *The Municipal Act* and the *Acts respecting Arbitrations and References*, and to have all the powers of arbitrators appointed under said Acts, and each party shall bear one-half of the cost of the necessary arbitration at conclusion of term of lease, but the City shall only pay for the land conveyed by them to the purchaser, what it is worth, without reference to its value for the purposes of operating a street railway or railways.

8. The City will construct, reconstruct and maintain in repair the street railway portion of the roadways, viz., for double track 16 ft. 6 in., and for single track, 8 ft. 3 in. on all streets traversed by the railway system, but not the tracks and substructure required for the said railways.

9. The purchaser shall pay to the City Treasurer the sum of eight hundred dollars per annum per mile of single track (not including turn-outs), such sum or sums to be paid in four quarterly instalments, as follows: January 1st, April 1st, July 1st and October 1st of each year, or on the first juridical day after each of the said days respectively, and shall also pay the City Treasurer monthly on the first Monday in each month — per cent. of the gross receipts from passenger fares, freight, express and mail rates and all other sources of revenue derived from traffic

obtained by operation of said street railway system. All books, accounts and vouchers kept by the purchaser shall be subject to monthly audit by auditors, to be appointed by the City Council, and all reasonable facilities for such audit shall be afforded by the purchaser.

TRACKS, ETC., AND ROADWAYS.

10. The purchaser shall maintain the ties, stringers, rails, turn-outs, curves, etc., in a state of thorough efficiency and to the satisfaction of the City Engineer, and shall remove, renew or replace the same, as circumstances may require, and as the City Engineer may direct. When a street upon which tracks are now laid is to be paved in a permanent manner, on concrete or other like foundation, then the purchaser shall remove present tracks and substructures and replace the same, according to the best modern practice, by improved rails, points and substructures of such description as may be determined upon by the City Engineer as most suitable for the purpose, and for the comfortable and safe use of the highway by those using vehicles thereon, and all changes in the present rails, tracks, and roadbed, construction of new lines, or additions to present ones, shall be done under the supervision of the City Engineer and to his satisfaction.

(*a*) In the event of the purchaser desiring to make any repairs, alterations to the ties, stringers, rails, turn-outs, curves, etc., on paved streets, the purchaser shall re-pave the portion of the roadway so torn up at his own expense.

11. When the purchaser desires or is required to change any existing tracks and substructures for the purpose of operating by electric or other motive power approved by the City Engineer and confirmed by the City Council, the City will lay down a permanent pavement in conjunction therewith upon the track allowance (as herein defined) to be occupied by such new tracks and substructures. This shall first apply only to existing main lines and thereafter to branch lines or extensions of main lines and branches, as and when the City Engineer may from time to time recommend and the City Council may direct and require; but such tracks as are now laid on a permanently formed roadway, must, when so required as aforesaid, be changed by the purchaser as hereinbefore provided, without any change of roadbed being made, or any expense occasioned to the City thereby.

12. The gauge of the system (4 ft. 11 in.) is to be maintained on main lines, and extensions thereof, and branch lines and extensions thereof; and the location of the railway on any street shall not be made by the purchaser or confirmed by the City Council until plans thereof showing the proposed position of the rails, the style of rail to be used, and the other works in each such street have been submitted to, and approved in writing, by the City Engineer.

13. The tracks shall conform to the grades of the streets upon which they are respectively laid, and the purchaser shall not in any way change or alter the same without the written permission of the City Engineer.

14. The purchaser will be required to establish and lay down new lines, and to extend the tracks and street car service on such streets as may be from time to time recommended by the City Engineer and approved by the City Council, within such period as may be fixed by by-law to be passed by a vote of two-thirds of all the members of said Council, and all such extensions and new lines shall be regulated by the same terms and conditions as relate to the existing system, and the right to operate the same shall terminate at the expiration of the term of this contract.

15. No new lines or extensions of existing lines shall be opened for traffic, until the purchaser has obtained a certificate in writing from the City Engineer that the same has been constructed to his satisfaction.

16. The purchaser shall not extend any line of the said railway beyond the limits of the City, or acquire, own, control or operate a line or lines connecting or in conjunction with or adjoining a city line or lines forming practically prolongations thereof, without first having had the plans of the same [as to position, elevation and gradients on the highway or crossings of highways, or until an agreement has been entered into whereby such suburban line or lines will be altered, (at purchaser's expense) to conform to the grades established by the City when the streets or routes become City property or within its limits], approved, in writing, by the City Engineer, and confirmed by the City Council.

17. In case the purchaser fails to establish and lay down any new line, as aforesaid, and to open the same for traffic, or to extend the tracks and services on any street or streets within such period as may be fixed by by-laws of the City Council, to be passed as herein provided, the privilege of laying down such new lines or extensions on the street or portion of street so abandoned by the purchaser, may be granted by the said Council to any other person or company, and the purchaser shall in such case have no claim against the City for compensation.

18. The City shall have the right to take up and replace the streets traversed by the railway lines for the purpose of altering the grades thereof, constructing or repairing pavements, sewers, drains or conduits, or for laying down or repairing water or gas pipes, and for all other purposes within the powers of the Corporation, without being liable for any compensation or damage that may be occasioned to the working of the railway, or the works connected therewith.

19. The privilege hereby granted is also subject to any existing rights (statutory or otherwise) of any other corporation which now has power to open or take up the streets of the City, such rights to be exercised with the permission and under the direction of the City Engineer.

20. The purchaser shall, within one year from the 16th day of May, 1891, discontinue the use of the buildings as stables on Scollard Street, and also the buildings on Yorkville Avenue.

21. The track allowances (as hereinafter specified), whether for a single or double line, shall be kept free from snow and ice at the expense of the purchaser, so that the cars may be used continuously; but the purchaser shall not sprinkle salt or other material on said track allowances for the purpose of melting snow or ice thereon without the written permission of the City Engineer, and such permission shall in no case be given on lines where horse power is used.

22. If the fall of snow is less than six inches at any one time, the purchaser must remove the same from the tracks and spaces hereinafter defined, and shall, if the City Engineer so directs, evenly spread the snow on the adjoining portions of the roadway; but should the quantity of snow or ice, etc., at any time exceed six inches in depth, the whole space occupied as track allowances (viz.: for double tracks, sixteen feet six inches, and for single tracks, eight feet three inches), shall, if the City Engineer so directs, be at once cleared of snow and ice and the said material removed and deposited at such point or points on or off the street as may be ordered by the City Engineer.

23. If the purchaser becomes bankrupt or insolvent or makes any assignment for the benefit of creditors, or becomes subject to the operations of any winding-up Act, or allows an execution against his goods or lands to remain in the hands of the Sheriff of Toronto unsatisfied for more than ninety day then and in any such case all the rails, stringers, ties, turnouts, points, sidings, etc., shall become the property of the City without compensation to the purchaser.

24. Electric or other new system of motor, or a combined system, approved by the City Engineer and confirmed by the City Council as suitable, shall be introduced within one year, and used upon such portions of the following streets as may be required by the City Engineer and approved of by the Council, within three years of the date of contract, viz.: Queen street from eastern City limit to High Park (or as near thereto as the City may then have power to grant a right to operate a line on said street); King street, from its intersection at Queen street and river Don to intersection with Queen street at Roncesvalles avenue; Front street from Simcoe street to Frederick street; Yonge street, from Front street to Ontario and Quebec railway tracks; Frederick and George streets, from Front to King street; Sherbourne street, from King street to North Drive; Elm avenue, from Sherbourne street easterly to Glen Road; Spadina avenue, from King street to Bloor street; Parliament street, from Queen street to Carlton street; Gerrard street, from Greenwoods avenue to Parliament street; Carlton street from Parliament street to Yonge street; College street, from Yonge street to Jameson avenue, at intersection of Dundas street; Dundas street, from Queen street to the bridge; Bloor street, from Sherbourne street to Roncesvalles avenue; York street, from Front street to Queen street; McCaul street, from Queen street to College street; Bathurst street, from King street to the Canadian Pacific railway tracks, and Broadview avenue, from Queen street to Danforth avenue.

25. Until such changes are carried out in such a manner as will permit its disuse, horse power may be continued on branch and other lines, or parts of same, under written permit from the City Engineer, who shall also have the right to order extra horse power to be employed on steep grades.

26. The speed and service necessary on each main line, part of same or branch, is to be determined by the City Engineer and approved by the City Council.

Day Cars.

27. Day cars are to commence running on all routes not later than 5.30 a.m., and to run until 12 o'clock midnight, at such intervals as the City Engineer, with the approval of the City Council, may from time to time determine.

Night Cars.

28. Night cars shall be run on such routes and at such hours and intervals as may be deemed necessary by the City Engineer and approved by the City Council.

Tickets and Fares.

29. Single (cash) fares are to be five cents each.

30. Fares on night cars to be double the ordinary maximum single fare rates.

31. A class of tickets must be sold at the rate of 8 for 25 cents, the same to be used only by passengers entering the cars between the time the day cars commence running and 8 a.m., and between 5 and 6.30 p.m.

A class of tickets must be sold at the rate of 25 for $1, and

Another class at the rate of 6 for 25 cents.

32. Children under nine years of age, and not in arms, are to be carried at half fare rates, and infants in arms are to be carried free; school children are to have school tickets at the rate of 10 for 25 cents, only to be used between 8 a.m. and 5 p.m. and not on Saturdays.

33. The payment of a fare shall entitle the passenger to a continuous ride from any point on said railway to any other point on a main line or branch of said railway within the City limits; and to enable this service to be carried out, transfer arrangements must be made by the purchaser to meet with the approval of the City Engineer and the endorsation of the Council.

34. Police constables in uniform, detective police officers in the employ of the City, and (while a fire is in progress) members of the City Fire Department in uniform, shall be carried free.

35. The purchaser shall be liable to, and shall indemnify the City against all damages arising out of the construction or operation of the said railway system.

CARS.

36. Cars are to be of the most approved design for service and comfort, including heating, lighting, signal appliance, numbers and route boards. They must be kept clean inside and out, and shall not exhibit advertisements outside unless under permit from the City Engineer. The platforms must be provided with gates. Cars are to be used exclusively for the conveyance of passengers, unless otherwise permitted by the City Engineer, and smoking will only be allowed on the front platform of closed cars, and rear seat and platform of open cars.

CONDUCTORS.

37. Each car is to be in charge of a uniformed conductor who shall clearly announce the names of cross streets as the cars reach them. Conductors shall not permit ladies or children to enter or leave the cars while the cars are in motion, and shall only receive and discharge passengers on right or curb side of vehicle on double track routes. On branch or light suburban lines, where horsepower is permitted, single horse cars may be run in charge of a uniformed driver.

38. Cars are not to be overcrowded (a comfortable number of passengers for each class of cars to be determined by the City Engineer, and approved by the City Council).

STOPPING OF CARS.

39. Cars shall only be stopped clear of cross streets, and midway between streets where distance exceeds 600 feet. Cars to have right of way, and vehicles or persons not to obstruct or delay their operation.

SUNDAY CARS.

40. No car shall be run on the Lord's Day until a Sunday service has been approved of by the citizens by a vote taken on the question.

WORKMEN.

41. No employee shall be compelled to work in the service of the railway for a longer period than 10 hours per day, or than 60 hours per week, or on more than 6 days per week, and no adult employee in the service of the railway shall be paid less than 15 cents per hour.

42. Nothing herein contained shall be taken as conferring upon the purchaser any right to construct or operate underground, overhead or elevated railways in the City of Toronto, or a surface railway on the Island; and the right to construct or operate, or to authorize the construction or operation of such railways in the said City, or in any part thereof, is hereby expressly reserved.

43. In case of any dispute or difference of opinion arising during the term of this contract between the purchaser and the City as to the meaning or construction of this specification, or of the contract to be prepared as herein provided, the same shall be determined on summary application after two clear days' notice to the other party by the person who, for the time being, fills the office of Judge of the County Court of the County of York, who may, as arbitrator, determine the same with the powers, as to costs and otherwise, of arbitrators under *The Municipal Act*, with right to appeal to the High Court of Justice for Ontario, whose decision shall be final.

44. The purchaser shall furnish to the City Engineer annually (on the first of January) a statement of tracks, cars and all plant and appliances on hand on that date, together with the value of the same.

PENALTY.

45. A deposit in cash, or marked cheque payable to the order of the City Treasurer, or other security, to the value of thirty thousand dollars ($30,000), and to the satisfaction of the City Treasurer, is to accompany each tender as a guarantee, returnable by City if offer not accepted. In the case of the successful bidder, the amount of the deposit will be retained until a formal contract, with bonds, etc., in the usual form of City contracts, and to be approved by the City Solicitor, has been duly entered into, and will be forfeited to the City if the party fails to completely execute the contract within thirty days after notification to enter into same.

46. In case of neglect or failure on the part of the purchaser to perform any of the conditions of the contract to be entered into in accordance with the above specification, the purchaser shall in each such case of failure forfeit and pay to the City the sum of $10,000 as liquidated damages and not as a penalty.

47. The purchaser shall provide a waiting room near the corner of Front and York streets (Union Station) suitable for the convenience of passengers taking the cars at this point.

N.B.—Persons who submit tenders on the foregoing specification may also submit offers or tenders on their own terms and in such event one deposit shall suffice. Persons may also submit offers or tenders on their own terms.

CITY ENGINEER'S OFFICE,
Toronto, May 6th, 1891.

AWARD OF THE ARBITRATORS

Re The Toronto Street Railway.

To whom all these presents shall come:

We, Edmund John Senkler, of the City of St. Catharines, in the County of Lincoln, and Province of Ontario, Judge of the County Court of the County of Lincoln, and Charles Henry Ritchie, of the City of Toronto, in the County of York, and Province of Ontario, one of Her Majesty's Counsel learned in the law, send greeting.

Whereas the Corporation of the City of Toronto, by notice in writing bearing date the twenty-third day of November, A.D. 1889, and under the corporate seal of the said the Corporation of the City of Toronto, and the hand of Edward Frederick Clarke, Esquire, M.P.P., Mayor of the said City, and Richard Theodore Coady, Esquire, Treasurer of the said the Corporation of the City of Toronto, and keeper of the City seal, addressed to the Toronto Street Railway Company, and served upon the said the Toronto Street Railway Company upon the said twenty-third day of November, A.D. 1889, did require the said the Toronto Street Railway Company to take notice that the Corporation of the City of Toronto intended, at the expiration of the term of the franchise granted to Alexander Easton, Esquire, by certain resolutions adopted by the municipal council of the said Corporation on the 14th day of March, 1861, and by a certain agreement made on the twenty-sixth day of March, 1861, between the Corporation of the City of Toronto and Alexander Easton, and by a certain by-law of the said Corporation passed on the twenty-second day of July, 1861, and numbered 353 (and which franchise the said Company then claimed the right to exercise), and also of certain other franchises subsequently granted by the said municipal council at different times for the said term to the Toronto Street Railway Company, to assume the ownership of the railways of the said Company, and of all real and personal property in connection with the working thereof, on payment of their value to be determined by arbitration;

And whereas by an order made in the High Court of Justice, Chancery Division, by the Honourable the Chancellor of Ontario, on Wednesday, the eighteenth day of June, A.D. 1890, in the matter of an arbitration between the Corporation of the City of Toronto and the Toronto Street Railway Company, and in the matter of the Acts of the Legislature of the Province of Ontario, 52 Victoria, chapter 13, and 53 Victoria, chapter 105, upon motion that day made unto the said Court by Mr. Robinson, Q.C., of Counsel for the Corporation of the City of Toronto, and upon reading the affidavit of C. R. W. Biggar, Q.C., a certain notice served by the said City of Toronto on the said Toronto Street Railway Company on the twenty-third day of November, 1889 (being the notice hereinbefore recited), the affidavit of Patrick Joseph McCormack, being the affidavit of service of such notice, and upon reading the notice of motion therein, and a certain agreement made between one Alexander Easton and the said the Corporation of the City of Toronto, on the twenty-sixth day of March, A.D. 1861 (being the agreement mentioned and referred

to in said notice), and upon hearing Counsel, the Honourable the Chancellor of Ontario did, pursuant to the statute firstly above named by the said order, appoint Edmund John Senkler, of the City of St Catharines, Judge of the County Court of the County of Lincoln, Samuel Barker, Esquire, and Charles Henry Ritchie, one of Her Majesty's Counsel learned in the law, the arbitrators to ascertain the value to be determined by arbitration under the said agreement;

And whereas the said arbitrators duly took upon themselves the burthen of the said reference and arbitration, and duly weighed and considered the several allegations made by and on behalf of the said the Corporation of the City of Toronto, and the said the Toronto Street Railway Company, the parties thereto, and also the proofs, vouchers, and documents which have been given in evidence before them;

Now, therefore, we, the said Edmund John Senkler, and Charles Henry Ritchie, being two of the above named arbitrators (Samuel Barker, the other of said arbitrators not joining in this award, although present at the making thereof), do hereby make and publish this our award of and concerning the matters so referred to us as aforesaid, in manner following, that is to say:

We find, award, adjudge and determine the value of the railways of the said Toronto Street Railway Compa all real and personal property in connection with the working thereof, to of one million four hundred and fifty-three thousand seven hundred and dollars ($1,453,788).

We further find, award, adjudge and determine that the said railways, and the said real and personal property so valued by us, consist of and include all the railways, and all the real and personal property specified or mentioned in the schedule hereunto annexed, and also all other railways belonging to or worked or constructed by the Toronto Street Railway Company within the City of Toronto aforesaid, and all other real and personal property of the Toronto Street Railway Company used or intended to be used in connection with their said railways or any of them, and that the above mentioned sum so found by us is the value of all said railways, and of all said real and personal property free and clear and fully and completely exonerated and forever discharged of and from all mortgages, debentures, bonds, debts, liens, encumbrances, claims and demands whatsoever either at law or in equity, and of every nature and kind whatsoever.

We are of opinion that upon the true construction of the agreement of the twenty-sixth of March, 1861, between the Corporation of the City of Toronto and Alexander Easton, and the resolutions recited therein, the right and privilege to construct, maintain and operate street railways upon certain streets in the City of Toronto, was granted to the said Easton for the period of thirty years from the date therein mentioned only, and not in perpetuity, and that all street railways constructed in the City of Toronto by said Easton, or by the Toronto Street Railway Company, have been constructed and operated under privileges for the same term of thirty years and not in perpetuity, and in valuing said railways we have valued the same as being railways in use, capable of being, and intended to be used and operated as street railways, but have not allowed anything for the value of any privilege or franchise extending beyond said period of thirty years, as we consider no privilege or franchise exists beyond that period.

We are also of opinion that on the true construction of the agreement of the nineteenth of January, 1889, between the Toronto Street Railway Company and the Corporation of the City of Toronto, the Company is not entitled to be paid for permanent pavements constructed by the City subsequent to the thirty-first of December, 1888, and we also think that such pavements cannot be considered as having been constructed or paid for by the Company as to entitle it to any allowance therefor under the fifth section of chapter fifty-eight, fortieth Victoria (Statutes of Ontario), and we have, therefore, not allowed anything in respect thereof. In valuing the pavements constructed prior to the first January, 1889, we have not made any deduction in respect of used life of such last mentioned pavements subsequent to that date, as having regard to the terms of the said agreement of the nineteenth of January, 1889, we do not think any such deduction should be made.

It was shown in evidence before us that the property valued by us is (in whole or in part) subject to the following encumbrances, that is to say: Debentures issued by the Toronto Street Railway Company under the authority of the Act (Statutes of Ontario) forty-seven Victoria, chapter seventy-seven, for the principal sum of six hundred thousand dollars, payable on the first of July, 1911, and bearing interest at the rate of six per cent. per annum, payable half-yearly.

Mortgage in favor of one Platt for eight thousand dollars (principal money) payable on the first of July, 1892, with interest at the rate of six per cent. per annum.

Mortgage in favor of one Crowther for one thousand seven hundred dollars (principal money) payable on the twenty-eighth of April, 1891, with interest at the rate of six per cent. per annum.

Mortgage in favor of one Gooderham for twenty-six thousand dollars (principal money) payable on the first of November, 1891, with interest at the rate of five per cent. per annum.

Mortgage in favor of one Allen for two thousand five hundred dollars (principal money), payable on the twenty-second of December, 1891, with interest at the rate of six per cent. per annum.

And mortgage in favor of one Parsons for two thousand dollars (principal money), payable on the first day of November, 1891, with interest at the rate of six per cent. per annum.

By sub-section two of section two of chapter one hundred and five, fifty-three Victoria, (Statutes of Ontario), it is provided as follows:

2. "Nothing in this Act contained shall affect the rights of the holders of the debentures heretofore issued under the Act of this Legislature, 47 Victoria, chapter 77, but in the event of the Corporation of the City of Toronto taking such possession, such debentures shall be and continue a first charge upon the said railway and property as declared by that Act, whether the same are retained by the Corporation of the City of Toronto, or are sold or leased by them to any other persons or company, but this declaration shall not be held or taken to prejudice or affect any claim which, on the part of the City of Toronto, may be contended for

before the arbitrator or arbitrators as to the amount at which the liability created by the said debentures shall be estimated or valued in calculating the amount to be paid to the Company by or under the award."

And Counsel for the City contended before us that under the original agreement, coupled with this section, it was our duty to ascertain and determine what amount should be deducted from the value of the property in respect of the difference between the rates of interest borne by the said debentures and mortgages, and the rate at which the City could borrow money on its own debentures and adduced evidence to show that the City could, on its own debentures, borrow money at a considerably lower rate than six per cent. per annum.

Although we do not regard the matter as being free from doubt, we are inclined to the opinion that the decision of this question does not come properly within the scope of the reference to us, and therefore we have not taken it into consideration, and our award is made without reference to it.

We have thought it proper, in respect of the main questions of principle involved, to state on the face of the award the basis upon which we have proceeded in arriving at our valuation, so that if the conclusions of law we have drawn and upon which we have acted, are erroneous, either party may be in a position to seek such redress as the law may allow.

In witness whereof we, the said Edmund John Senkler and Charles Henry Ritchie (being a majority of the said arbitrators), have hereunto set our hands this fifteenth day of April, A.D. one thousand eight hundred and ninety-one.

(Signed) E. J. Senkler.

(Signed) C. H. Ritchie.

Signed and published the fifteenth day of April, A.D. 1891, by the said Edmund John Senkler and Charles Henry Ritchie (the above-mentioned Samuel Barker being present at the time although not joining in the award), in presence of

(Signed) J. F. Middleton.

SCHEDULE.

REFERRED TO IN ANNEXED AWARD, CONTAINING LIST OF THE REAL AND PERSONAL PROPERTY INCLUDED IN VALUATION MADE BY ARBITRATORS.

(1) All railway tracks of the Toronto Street Railway Company now on the streets of the City of Toronto, including curves, switches, cross-overs and turnouts, stated to be 68.72 miles measured in single track.

(2) The interest of the said Company in all pavements and roadbeds on the streets of said City (basis of valuation of which is shown in award).

(3) Lands, including all buildings and erections thereon:

(*a*) That freehold property of the Toronto Street Railway Company on the south-east corner of Front and Frederick streets, in the City of Toronto, having a frontage of two hundred feet on the south side of Front street, a frontage of two hundred feet and five inches on the north side of Esplanade street, and a frontage of four hundred and fifty-three on the east side of Frederick street, excepting thereout the lot known as the Currie lot, having a frontage on Frederick street of eighty feet and two inches by a depth of sixty-six feet.

(*b*) That freehold property of the said company on the south-west corner of Front and George streets, in said city, having a frontage of one hundred and thirty-eight feet and five inches on the south side of Front street, a frontage of four hundred and forty-three feet and three inches on the west side of George street, and a frontage of one hundred and thirty-four feet and three inches on the north side of Esplanade street.

(*c*) That freehold property of the said company on the north-west corner of Front and Frederick streets, in said city, having a frontage of one hundred and thirty-six feet on the north side of Front street, and a depth of one hundred and thirty-six feet and nine inches on the west side of Frederick street.

(*d*) That freehold property of the said company on the south-east corner of King and St. Lawrence streets, in said city, having a frontage of two hundred feet on the south side of King street, and a frontage of one hundred and ninety-three feet and nine inches on the east side of St. Lawrence street.

(*e*) That leasehold property of the said company on the north side of St. Lawrence street occupied by them in connection with the freehold property lastly above described, and held by the said Company under lease from the trustees of the Toronto General Hospital.

(*f*) That freehold property of the said Company on the south side of Scollard street, in said city, commencing on the south side of Scollard street at a point distant one hundred and seventy feet westerly from the west side of Yonge street, and running westerly from that point three hundred feet, and having a uniform depth of seventy-five feet and eight inches, together with the leasehold property of the said Company adjoining the same and used in connection therewith.

(*g*) That freehold property of the said Company on the north side of Yorkville avenue, in said city, commencing at a point on the north side of Yorkville avenue three hundred and seventy feet westerly from the west side of Yonge street and running from that point westerly one hundred feet, and having a uniform depth of one hundred and sixty-five feet and eleven inches.

(*h*) That freehold property of the said Company on the west side of Yonge street, in the block between Davenport road and Belmont street, in said city, known as lot number four, registered plan 270, having a frontage of ninety-seven feet six inches on Yonge street, and running back to a lane.

4. Rolling stock:

(*a*) Cars—90 two-horse cars (closed) including twelve original cars purchased by the Company; 56 open cars, 116 one-horse cars.

(*b*) Busses—56 busses (Stephenson, N.Y., make); 43 other busses.

(*c*) Sleighs—40 car sleighs (Speight & Son, makers); 60 car sleighs (T. S. R. Co. make).

5. Horses—The 1,372 horses belonging to the Company and referred to in schedules filed before arbitrators.

6. Harness, machinery in mill and miscellaneous chattels appearing in schedules filed before arbitrators, the value of which has been fixed by the parties of the reference at fifty-one thousand dollars, pursuant and subject to agreement between them appearing at page 68 of volume 7 of the shorthand reporter's notes of evidence taken before arbitrators, which value the arbitrators have adopted.

7. Tracks in Company's buildings, the value of which has been agreed upon by the parties and adopted by the arbitrators.

8 Horse feed on hand valued at ten thousand dollars.

9. Chattels enumerated in exhibit 188 filed before us, the value of which has been agreed upon by the parties and adopted by the arbitrators.

(Signed) E. J. SENKLER.

(Signed) C. H. RITCHIE.

Witness:
J. F. MIDDLETON.

SCHEDULE A.

TORONTO STREET RAILWAY.

Length of Tracks in Operation. Length of Tracks Constructed but not in Operation. Length of Tracks to be constructed.

STREET.	FROM.	TO.	IN OPERATION.		Constructed not Operat'd Double.	TO BE C'NSTRUCT'D	
			Single.	Double.		Single.	Double.
			feet.	feet.	feet.	feet.	feet.
Front	Frederick	Simcoe	370	4,632			
King	Don	Roncesvalles		16 835	4,243		4,300
Queen	Lee Ave.	High Park	2,202				2,230
College	Yonge	Jamieson					2,386
Carlton	"	Parliament					
Gerrard	Greenwood	"	650			650	8,686
Winchester	Sumach	"	1,454				
Bloor	Sherbourne	Roncesvalles			15,932		4,700
Broadview	Queen	Danforth		6,826			
Parliament	"	Winchester	301	3,504			
Elm Ave	Sherbourne	Glen Road				2,900	
Sherbourne	King	North Drive		8,095			2,950
Frederick	"	Front	103	146			
George	"	"		252			
Church	Front	Bloor		8,532			
Yonge	"	C. P. Railway	148	12,764			
York	"	Queen		2,144			
McCaul	College	"		3,338			
Spadina	King	Bloor	113	7,930			
Bathurst	"	C. P. Railway		11,302			
Strachan	"	Wellington		394			
Dundas	Queen	Jamieson	1,029	5,843			
Dovercourt	College	C. P. Railway		2,846		3,300	
Dufferin and	Union	Bloor				4,980	
		Feet	6,370	152,595	20,175	11,750	25,752
		Miles	1.20	28.90	3.82	2.22	4.88

SUMMARY.

Single tracks in operation	1.20 miles	
Double tracks reduced to single, in operation	57.80 "	
Curves reduced to single in operation	1.36 "	
Cross-overs in operation	0.71 "	
		61.07 miles
Double tracks reduced to single, constructed but not operated	7.64 "	
Double tracks to be constructed (reduced to single)	9.76 "	
Single tracks to be constructed	2.22 "	
Grand total		80.69 miles

SCHEDULE A.—*Continued.*

DESCRIPTION OF TRACK, SHOWING DIFFERENT KINDS OF CONSTRUCTION LAID ON STREETS.

STREET.	30 lb. rail. 5" x 6" stringer. 4" x 6" tie.	30 lb. rail. 5" x 8" stringer. 4" x 6" tie.	25 lb. rail. 5" x 6" stringer. 4" x 6" tie.	25 lb. rail. 5" x 8" stringer. 4" x 6" tie.	22 lb. rail. 5" x 6" stringer. 4" x 6" tie.
	Feet.	Feet.	Feet.	Feet.	Feet.
Front	.....	8,111	1,311	.....	212
King	14,513	.....	5,199	.....	21,521
Queen	47,354	.....	32,343	....	.....
College	8,933	13,472	4,555	.....	....
Carlton	....	8,372	.....	.....	.....
Gerrard	1,393	.....	2,157	.. ..	....
Winchester	704	.....	750	.....	.....
Bloor	....	31,864	.....	....	.....
Broadview Avenue	.....	13,652	.....	.....	.....
Parliament	4,658	.....	2,652	.....	.....
Sherbourne	.....	16,190	.....	. ...	.....
Frederick	.....	.....	396	.....	.....
George	504	.....	.....	.. ....	. ....
Church	.....	7,351	. ....	9,713½	.....
Yonge	.....	7,321	9,325	9,030	.....
York	.....	4,288	.....	....	.....
McCaul	.....	6,677	.....	.... .	.....
Spadina Avenue	.....	3,091	.....	12,883	.....
Bathurst	.....	22,605	. ....	.....	.....
Strachan Avenue	161	.... .	628	.....	.....
Dundas	526	7,305	2,228	2,648	.....
Dovercourt	.....	5,692	....	... .	. .
Single Track—Totals	70,260	134,477	61,554	34,274	21,733
Single Track—Miles	13.11	31.28	11.65	6.49	4.11

NOTE.—Gauge of tracks, 4 ft. 11 in.; devil's strip, 3 ft. Ties and stringers are of pine The ties are spaced 5 feet between centres, and are 4 in. x 6 in. x 7 feet long. Stringers are spiked to ties with 9 in. x ½ in. spikes, one through each tie, and knees are placed on the outside of stringers only.

Joint knees weigh 5 lbs. each, and intermediate 2 lbs. 1 oz. each. There are 9½ miles of iron rails, the balance are of steel. All curves, switches and diamond crossings are of cast iron.

SCHEDULE A—*Continued.*

Road beds of the Toronto Street Railway, showing the number of miles of each kind of pavement for single and double tracks laid on streets.

NOTE—The width for single tracks is 8 ft. 4 in., and for double 16 ft. 8 in. Length of pavements on streets are in lineal feet.

Street.	Cedar and Cobble.	Cedar Block.	Asphalt & Scoria Blocks.	Sandstone Setts on Sand.	Scoria Blocks on Concrete.	Granite Setts on Concrete.	Cobble with Stone Curbs.	Cobble.	Granite Setts on Sand.	Macadam M. Gravel G.
	feet.	feet.	feet.	feet.	feet.	feet.	feet.	feet.	feet.	feet.
Front								(s) 370 (d) 2,115	(d) 2,319	
King	(d) 808	(d) 12,619			(d) 1,845			(d) 52	(d) 4,737	
Queen	(d) 8,010	(s) 2,090 (d) 22,910						(d) 3,850		(d) 4,049 G
College		(d) 6,755						(d) 6,735		
Carlton		(d) 4,054								
Gerrard										(d) 1,528 M (s) 650 M
Winchester										(s) 1,466 M
Bloor			(d) 2,462						(d) 11,615	
Broadview Avenue		(d) 6,838								
Parliament		(d) 2,499						(d) 879		(s) 406
Sherbourne					(d) 8,107					
Frederick								(s) 115 (d) 158		
George								(d) 284		
Church				(d) 8,544						
Yonge		(s) 148 (d) 11,964							(d) 800	
York		(d) 2,168								
McCaul		(d) 3,362								
Spadina Avenue		3,539					(s) 113 (d) 3,311		(d) 1,139	
Bathurst		3,625					(d) 3,132	(d) 1,175	(d) 3,291	
Strachan Avenue										(d) 406
Dundas		(s) 870 (d) 1,033					(d) 5,057			
Dovercourt Road							(c) 2,798	(s) 3,300		
Total double track	8,818	81,006	2,642	8,544	1,845	8,107	14,298	15,248	23,901	(d) 1,934 M
Road bed, miles	1.67	15.39	0.50	1.61	0.35	1.53	2.71	2.89	4.53	0.36
Total single track		3,008					1.13	3,785		(s) 2,522 M 0.48
Road bed, miles		0.59					0.02	0.72		(d) 4,049 G 0.77

(d) Double track. (s) Single track.

TENDERS OF KIELY, EVERETT & MCKENZIE.

No. 1.

Annual Percentages of Gross Receipts.

1. Up to $1,000,000, 7 1-10 per cent.

2. From $1,000,000 to $1,500,000, 8 1-10 per cent.

3. From $1,500,000 to $2,000,000, 9 1-10 per cent.

4. From $2,000,000 to $2,500,000, 10 1-10 per cent., and advancing 1 per cent. on each additional $500,000.

5. If the City guarantee bonds at 4 per cent., 1 per cent. a year on the amount to be paid to the City for the guarantee.

No. 2.

6. If class of tickets 8 for 25 cents struck out, an additional 2 per cent per annum on gross receipts to be added to each of said annual percentages.

No. 3.

7. If paragraph 9 struck out, an annual payment of $136,000; if paragraph 9 and tickets 8 for 25 cents both struck out, an annual payment of $151,000.

(Signed) G. W. KIELY.

(Signed) WM. MCKENZIE.

(Signed) HENRY A. EVERETT

Tender No. 1.

Of George W. Kiely, of Toronto, 580 Jarvis street; William McKenzie, of Toronto, 623 Sherbourne street, and Henry A. Everett, of Cleveland, Ohio, Secretary of East Cleveland Railway Company (electric), for the privileges to be disposed of by the Corporation of the City of Toronto under the amended conditions for the privilege of operating surface street railways within the limits of the City of Toronto, as adopted by the City Council, May 5th, 1891.

We, the said George W. Kiely, William McKenzie, and Henry A. Everett, called purchasers under the said conditions, respectfully submit to the Corporation of the City of Toronto the following tender, based upon the said conditions (a copy of which is hereto annexed).

1. We offer to pay to the Corporation of the City of Toronto under section 9, 7 1-10 per cent. per annum of the gross receipts in addition to the other money provided for in said section.

2. And we, the said purchasers, further offer that should the said gross receipts described as aforesaid be in excess of $1,000,000 and not greater than $1,500,000, then the purchasers will pay on any excess over $1,000,000, 8 1-10 per cent. per annum of said gross earnings to the said City of Toronto.

3. And we, the said purchasers, further offer that should the said gross receipts be in excess of $1,500,000 and not greater than $2,000,000, then the purchasers will pay on any excess over $1,500,000, 9 1-10 per cent. per annum of said gross earnings to the said City of Toronto, and the further sum of 1 per cent. per annum upon each additional $500,000.

And we, the said purchasers, further offer that if the City of Toronto shall procure the necessary legislation to guarantee debentures bearing 4 per cent. interest proposed to be issued by said purchasers to an amount not to exceed in the aggregate the sum of $2,000,000, the said sum or any part thereof to be used solely for the purpose of equipping the street railroad with the improvements contemplated by the said specifications; we, the said purchasers, will pay to the City of Toronto, in addition to the sums hereinbefore enumerated, an additional sum of money equal in amount to 1 per cent. per annum on the amount of debentures issued by said purchasers and guaranteed in the manner hereinbefore provided.

This tender is made upon the faith that an electric railway system will be approved and confirmed under section 24 of the specifications, unless some new system shall in the meantime be devised for the operation of street railways which is not more expensive and is equally commercially successful with known electric system.

This tender is to apply to the purchasers or to any company incorporated by them for the purpose of carrying out this tender.

Respectfully submitted,

(Signed) G. W. KIELY.

(Signed) WM. MCKENZIE.

(Signed) HENRY A. EVERETT.

Dated at Toronto this 26th day of May, A.D. 1891.

Tender No. 2.

Of George W. Kiely, of Toronto, 580 Jarvis street; William McKenzie, of Toronto, 623 Sherbourne street; and Henry A. Everett, of Cleveland, Ohio, Secretary of East Cleveland Railway Company (electric), for the privileges to be disposed of by the Corporation of the City of Toronto under the amended conditions for the privilege of operating surface street railways within the limits of the City of Toronto, as adopted by the City Council, May 5th, 1891.

We, the said George W. Kiely, William McKenzie, and Henry A. Everett, called purchasers under the said conditions, respectively submit to the Corporation of the City of Toronto the following alternative tender based upon the aforesaid specifications:

They repeat all the allegations of their tender No. 1, and make them a part hereof as fully as though they were herein written, but modified as follows, to wit:

That if the City of Toronto will eliminate from clause 31 of the specifications the words, "A class of tickets must be sold at the rate of eight for twenty-five cents, the same to be used only by passengers entering the cars between the time the day cars commence running and 8 a.m., and between 5 and 6.30 p.m.," the said purchasers offer to pay to the City of Toronto 2 per cent. of the gross receipts in addition to the percentages that they have offered to pay under their tender No. 1.

Respectfully submitted,

(Signed) G. W. KIELY.

(Signed) WM. MCKENZIE.

(Signed) HENRY A. EVERETT.

Dated at Toronto, this 26th day of May, A.D. 1891.

Tender No. 3.

Of George W. Kiely, of Toronto, 580 Jarvis Street; William McKenzie, of Toronto, 623 Sherbourne street; and Henry A. Everett, of Cleveland, Ohio, Secretary of the East Cleveland Railway Company (electric) for the privileges to be disposed of by the Corporation of the City of Toronto under the amended conditions for the privilege of operating surface street railways within the limits of the City of Toronto, as adopted by the City Council, May 5th, 1891.

We, the said George W. Kiely, William McKenzie, and Henry A. Everett, called Purchasers under the said conditions, respectfully submit the following alternative tender to the Corporation of the City of Toronto, based upon the said conditions (a copy of which is hereto annexed) subject to the following qualifications:

We hereby made our tender No. 1 a part hereof as fully as though herein written, except as to section No. 9 of the specifications, and that portion of section No. 31 providing for eight tickets for twenty-five cents.

We offer, in lieu of section No. 9 of the specifications, to pay to the City of Toronto during the period covered by the purchase, the sum of $136,000 per annum, payable in four equal quarterly payments.

And we further offer that if the said portion of section 31 providing for 8 tickets for 25 cents shall also be eliminated, we will pay to the City of Toronto during the period covered by the purchase, the sum of $151,000 per annum, payable in four equal quarterly payments, the said sum of $151,000 to be in lieu of section No. 9, and that portion of section No. 31 providing for 8 tickets for 25 cents.

Respectfully submitted,

(Signed) G. W. KIELY.

(Signed) WM. MCKENZIE.

(Signed) HENRY A. EVERETT.

Dated at Toronto this 26th day of May, A.D., 1891.

Amended Tender of Kiely, Everett and McKenzie for the Toronto Street Railway.

TORONTO, June 26th, 1891.

Alfred McDougall, Esq., Chairman of the Street Railway Committee, City.

DEAR SIR,—At the meeting of the Street Railway Committee on the evening of the 25th inst., our clients decided to withdraw all their tenders and to consider whether they would substitute a fresh tender in the direction of the claims made by the Mayor, and some of the Aldermen, that the percentages should increase at a higher progressional ratio.

Our clients expected to have received their tenders and deposits this a.m., but we are informed by the Clerk and Treasurer that a formal resolution of the Council is necessary.

We enclose an amended tender which our clients have, after consideration, decided to make, and we confirm the former tenders amended by the enclosed tender, in the rate of gross percentages, and we confirm the deposit of $30,000 as the deposit for security.

Yours respectfully,

(Signed) KINGSMILL, SYMONS, SAUNDERS & TORRANCE.

BAIN, LAIDLAW & CO.

TORONTO, 25th June, 1891.

To the Corporation of the City of Toronto, and to Alfred McDougall, Esq., Chairman of the Street Railway Committee:

We, George W. Kiely, William McKenzie, and Henry A. Everett, offer to buy the privilege of operating surface street railways in the City of Toronto, on the basis of the amended conditions, and to pay the following rates of percentages of annual gross receipts, namely:

(1)	Up to $1,000,000	8 per cent.
(2)	From $1,000,000 to $1,500,000	10 "
(3)	From $1,500,000 to $2,000,000	12 "
(4)	From $2,000,000 to $3,000,000	15 "
	All over $3,000,000	20 "

And we make this offer on condition that it shall be disposed of without any unnecessary delay.

Yours respectfully,

(Signed) G. W. KIELY.

WM. MCKENZIE.

H. A. EVERETT.

No. 2920. A BY-LAW

To authorize a certain agreement between Messrs. Kiely, Everett and McKenzie and the City of Toronto for the lease of the Toronto Street Railway.

[Passed July 27th, 1891.]

Whereas the Corporation of the City of Toronto has acquired the ownership of the railways of the Toronto Street Railway Company, and all the real and personal property in connection with the working thereof, and has asked, by public advertisement, for tenders from persons willing to acquire the said railways and the privileges of operating surface street railways in the City of Toronto;

And whereas George W. Kiely, William McKenzie and Henry A. Everett have tendered for the acquisition of such railways and the privilege of operating surface street railways, as shown by report No. 12 of the Street Railway Committee

and appendices thereto, which report was adopted by Council on the 21st day of July, 1891, and it is advisable that the tender of the said Messrs. Kiely, McKenzie and Everett be accepted by the said Corporation;

Therefore the Municipal Council of the Corporation of the City of Toronto enacts as follows:

I.

That the Mayor and City Treasurer be authorized and empowered to execute and affix the City seal on behalf of the City to an agreement between the Corporation of the City of Toronto and the said Messrs. Kiely, McKenzie and Everett, based on the specifications and conditions for the privilege of operating surface street railways within the City of Toronto, as adopted by the City Council, May 5th, 1891, and the said tender of the said Messrs. Kiely, McKenzie and Everett, as contained in the appendix to said report No. 12 of the said Street Railway Committee, provided that such agreement be drawn, settled and approved of by the City Solicitor and Counsel learned in the law; and provided further that the date of execution of the contract shall be taken to be the date of acceptance of the tender for the purposes of the second paragraph of the said conditions, and provided further that no claim shall be made by Messrs. Kiely, Everett and McKenzie or be allowed by this Council for any depreciation of property during the time the City has charge of the said street railway.

I certify that I have examined this Bill and that it is correct.

E. F. CLARKE,
Mayor.

JOHN BLEVINS,
City Clerk.

Council Chamber, Toronto, July 27th, 1891.

G. W. KIELY.

WM. MCKENZIE.
By his Attorney.
NICOL KINGSMILL.

H. A. EVERETT.

C. C. WOODWORTH.

Witnesses:

THOMAS CASWELL.

GEO. KAPPELE.

Province of Ontario,
County of York,
To Wit:

I, George Kappele, of the City of Toronto, in the County of York, esquire, make oath and say:—

1. That I was personally present and did see the foregoing agreement and award, conditions, tender and by-law attached thereto, duly signed, sealed and executed in triplicate by the within named George Washington Kiely; William McKenzie, by his attorney, Nicol Kingsmill, Henry Azariah Everett and Chauncey Clark Woodworth, four of the parties thereto.

2. That the said agreement and award, conditions, tender and by-law attached thereto in triplicate were executed at the City of Toronto aforesaid.

3. That I know the said parties.

4. That I am a subscribing witness to the said agreement and award, conditions, tender and by-law attached thereto in triplicate, and that the name "Geo. Kappele" subscribed to the said agreement and award, conditions, tender and by-law attached thereto in triplicate, is in the proper handwriting of me this deponent.

Sworn before me at the City of Toronto, in the County of York, this first day of September, A.D 1891.

GEO. KAPPELE.

C. R. W. BIGGAR.
A Commissioner for taking Affidavits, etc.

SCHEDULE B.

(*Section 6.*)

This agreement made this 24th day of June in the year of our Lord, one thousand eight hundred and ninety-two, between the Toronto Railway Company, hereinafter called "The Company" of the first part, the Corporation of the City of Toronto, hereinafter called "The Corporation" of the second part, and George Washington Kiely, William McKenzie, Henry Azariah Everett, and Chauncey Clark Woodworth, hereinafter called "the purchasers" of the third part.

Whereas, by Indenture bearing date the first day of September, one thousand eight hundred and ninety-one, and forming schedule "A" to an Act passed in the 55th year of Her Majesty's reign, chapter 99, between the Corporation and

"the purchasers," the Corporation sold, granted and assigned to the purchasers all the railways and properties acquired by the Corporation from the Toronto Street Railway Company, and certain exclusive rights, privileges and franchises in respect of the operation of surface street railways in the City of Toronto which are in the said agreement more fully set forth.

And whereas by the said agreement it was provided that if the purchasers formed a joint stock company for the purpose of carrying the agreement into effect, then upon the conditions therein stated, the said Company contemplated to be formed should upon executing the necessary contract of substitution, be substituted for the said purchasers; and clause twenty-three of the conditions attached to the said agreement should apply to such Company so to be formed, and should cease to apply to the individual purchasers who should thenceforth be discharged from all individual liability under the said agreement and conditions.

And whereas, the said purchasers have formed a company under the name of the Toronto Railway Company, in this agreement called "the Company," for the purpose of carrying the said agreement of the first day of September, one thousand eight hundred and ninety-one, into effect, which Company is the party hereto of the first part.

And whereas, the said purchasers have assigned to such Company all their right, title and interest under the said recited agreement.

And whereas, the Corporation has consented and agreed that the Company should be substituted as the party contracting and as the party to be and become liable to the Corporation in the place and stead of the purchasers in the said agreement.

Now therefore these presents witness as follows:—The Company hereby covenants and agrees with the Corporation that the Company shall in respect to the said agreement of the first day of September, one thousand eight hundred and ninety-one, as and for and in the room and place of the purchasers as contemplated by the twenty-third clause of the said agreement, assume, execute and perform all the covenants, agreements and obligations in the said agreement contained and on the part of the said purchasers to be made, done, performed, fulfilled and kept, subject to the conditions, provisions and stipulations in the said agreement contained, and the Company shall and will in all respects be bound by the said agreement as fully and effectually as if it, the Company, instead of the purchasers had been the party thereto of the second part.

And the Corporation on its part hereby covenants and agrees with the Company that it does hereby accept the said Company in lieu and in place of the said purchasers, so that the Company shall have the same rights and privileges and generally be in the same plight and condition as regards such agreement as if the Company had been the party of the second part to such agreement instead of the

purchasers; and the Corporation will on its part execute and perform all the covenants, agreements and obligations in the said recited agreement contained with the Company in the same manner and as fully as if the covenants and agreements in the said agreement expressed or implied on the part of the Corporation with the purchasers had been originally made with the Company.

And the Corporation hereby releases the purchasers and each of them of and from all liability by them assumed or entered into in or by the said in part recited agreement of the first day of September, 1891, and from all contracts, covenants, agreements and obligations therein contained, and by them to be performed, fulfilled, or kept.

In witness whereof the parties hereto of the first and second parts have caused their corporate seals to be hereunto affixed, and these presents to be signed by the proper officers in that behalf, and the parties of the third part have hereunto set their hands and seals.

Signed, sealed and delivered
in the presence of
(As to execution by George W. Kiely),
A. R. CREELMAN,
(As to execution by William McKenzie, Henry A. Everett and Chauncey C. Woodworth, by his Attorney, William McKenzie.)
HARRY SYMONS.

TORONTO RAILWAY COMPANY by
WM. MCKENZIE,
President.

JAMES GUNN.
Secretary.
(Company Seal.)

ROBERT J. FLEMING,
Mayor.

JOHN PATTERSON.
Deputy Treasurer.
(City Seal.)

G. W. KIELY, (Seal.)

WM. MCKENZIE, "

H. A. EVERETT, "

C. C. WOODWORTH, "
by his attorney
WM. MCKENZIE.

III.

AGREEMENT AS TO REMOVAL OF SNOW.

THIS INDENTURE made the nineteenth day of February in the year of our Lord one thousand eight hundred and ninety-seven.

Between

The Toronto Railway Company, hereinafter called the Company, of the first part,

and

The Corporation of the City of Toronto, hereinafter called the Corporation, of the second part.

1. Whereas by clauses numbers 21 and 22 of the conditions annexed to the agreement entered into between the said Corporation and George Washington Kiely, William McKenzie, Henry Azariah Everett and Chauncey Clark Woodworth, and which agreement is attached to the Act of the Legislature of Ontario incorporating the said Company, being 55 Victoria, chapter 99, it is provided that the track allowances shall be kept free from snow and ice at the expense of the purchaser, so that the cars may be used continuously, and that if the fall of snow is less than six inches at any one time, the purchaser must remove the same from the tracks and spaces thereinafter defined, and shall, if the City Engineer so directs, evenly spread the snow on the adjoining portions of the roadway; but should the quantity of snow or ice, etc., at any time exceed six inches in depth, the whole space, occupied as track allowance (namely, for double tracks sixteen feet six inches, and for single tracks eight feet three inches) shall, if the City Engineer so directs, be at once cleared of snow and ice, and the said material removed and deposited at such point or points on or off the street as may be ordered by the City Engineer; and by section 25 of the said Act it is provided that whereas doubts have arisen as to the construction and effect of sections 21 and 22 of the said Conditions, it is hereby declared and enacted that the said Company shall not deposit snow, ice or other material upon any street, square, highway or other public place in the City of Toronto without having first obtained the permission of the City Engineer of the said City, or the person acting as such:

And whereas the use of an electric sweeper has been ascertained to be a convenient mode of sweeping the snow from the track allowance and throwing it on the adjoining portions of the roadway, and the said Company have requested permission to use the same; and the said Corporation have consented to its use upon the terms and conditions herein set out:

And whereas the City Engineer by these presents and for the purposes of this agreement, has permitted the deposit of snow as aforesaid by the electric sweeper on the adjoining portions of the roadway, and the Corporation have agreed with the Company to remove and carry away from the adjoining portions of the roadway from time to time, such quantities of the accumulated snow and ice as the Corporation acting through their proper officials, shall think necessary in order to keep and maintain such portions of the roadway in repair in pursuance of the obligations of the Municipal Law;

Now this Indenture witnesseth that the Corporation and the Company mutually and respectfully covenant and agree with each other.

1. That the Company may use an electric sweeper or sweepers upon the track allowances of the railway for the purpose of sweeping the snow from the track allowances, and throwing it on the adjoining portions of the roadway between the track allowances and the curb or sidewalk, such sweeper or sweepers to be used in a reasonable and proper manner for the sweeping of snow during a fall, and within twenty-four hours thereafter, and for no other purpose and at no other times, and the same is to be operated in a manner satisfactory to the City Engineer, and so as not to throw, scatter or deposit snow or other material upon the sidewalks.

2. That the Corporation will from time to time, as the Street Commissioner acting under the authority of the City Engineer shall deem necessary, remove and carry away from the adjoining portions of the roadway, including intersecting streets, such quantities of the accumulated snow and ice as shall be deemed necessary in order to keep and maintain the said portions of the roadway in repair, as required by section 531 of the Consolidated Municipal Act and amendments thereto, and shall keep accounts of the outlay and expenditure incurred for that purpose, showing streets, names of men, time and rate of wages, and shall render an account thereof weekly to the Superintendent of the Company, which accounts shall be open to inspection by the said Superintendent; two-thirds of such expenditure to be paid and borne by the Corporation and one-third thereof by the Company. Provided always, and it is hereby declared, covenanted and agreed between the Corporation and the Company, that the Superintendent of the Company shall have the right to consult the City Engineer or the Street Commissioner as to the necessary work to be done in the removal of snow and ice, and to lay before the City Engineer or Street Commissioner his opinion in regard to such removal, and the quantity to be removed, and the manner of removal; but in the event of any difference of opinion between the City Engineer or Street Commissioner and the Superintendent, the City Engineer or Street Commissioner shall, after consideration of the opinions of the Superintendent, exercise his own discretion and judgment and the Company shall in all cases be liable for one-third of the said expense incurred by the City for such removal.

3. And that in case of heavy falls of snow and necessity for quick removal of accumulations at crossings or other places, the Company through its Superintendent may, with the consent of the City Engineer or Street Commissioner, assist in the removal of accumulations of snow and ice, and in such case shall keep accounts of the outlay and expenditure incurred by him for that purpose, and render such accounts, certified as to correctness by the Superintendent of the Company, weekly, to the City Engineer or Street Commissioner, showing streets, names of men, time and rate of wages, such expenditure to be paid and borne as aforesaid.

4. That the Company will operate the said electric sweepers with reasonable and proper care and will not throw or scatter snow on sidewalks, and immediately after the use of the sweepers will evenly spread the snow thrown from the track allowances over the adjoining portions of the roadway between the track allowances and the curb or sidewalk, and will remove from the sidewalks and crossings all snow deposited thereon by the use of the said sweepers.

5. That the Company will pay to the Corporation through its City Treasurer weekly, after the rendering of the said accounts, one-third of the outlay and expenditure incurred by the Corporation in the removal of accumulations of snow and ice as aforesaid, and in the event of default for ten days will pay interest thereon.

6.—(1) That the Company assumes and becomes liable as between the Corporation and the Company for all damages recoverable or recovered by any person or persons for injuries to persons or property caused by the use of the electric sweepers or caused by the accumulations of snow or ice upon the streets between the curb and curb from the natural fall, from the snow thrown from the sidewalks, drains, street gullies, gutters and cross-cuts and from the track allowances, or from any failure to remove or carry the same away, but such liability shall not extend to the existence of any drains, street gullies, gutters or cross-cuts opened by the City, or the omission or neglect of the City to open the same, or to the act of other persons or corporations depositing upon the street wherever the tracks of the Company are situated, snow or ice removed from other streets or properties.

(2) In the event of any claim being made by any person or persons against the Corporation for damages for injuries as aforesaid, prompt notice thereof shall be given to the Superintendent of the Company or left at his office, and if the claim is disputed by the Company and an action is brought against the Corporation to recover damages, the writ of summons or process served on the Corporation shall be delivered to the Superintendent of the Company, and the Company shall be entitled, if they dispute the claim, to defend the action in the name of the Corporation, and to plead all grounds of defence which might have been pleaded by the Corporation.

(3) That the Company will pay all final judgments for damages and costs recovered in any such actions, and will protect, indemnify and save harmless the Corporation therefrom.

7. Provided always that nothing herein contained shall enlarge the liability of the Corporation beyond what it now is.

8. It is further understood and agreed by and between the Corporation and the Company that these presents shall be operative for the winter of 1896-7 and afterwards until thirty days' written notice shall be given by the Corporation or the Company during any year before the first day of November for the cancellation thereof, and upon service of such notice at the expiration of the period of thirty days these presents shall cease and be void, and the Corporation and the Company shall thereby be restored to the original position, rights and obligations under the agreement between the Corporation and the Company, and the explanatory legislation.

In witness whereof the Corporation and the Company have hereto set their respective seals under the hand of the proper officials.

Signed, sealed and delivered by the Corporation in the presence of "CHARLES CURTIS."

(Signed) F. L. WANKLYN,
Manager.
(Seal.)

" J. C. GRACE,
Sec.-Treasurer.

" R. J. FLEMING,
(Seal.) *Mayor.*

" R. T. COADY,
Treasurer.

IV.

56 Vic. chap. 101.

AN ACT RESPECTING THE TORONTO RAILWAY COMPANY.

[*Assented to 27th May, 1893.*]

Amends sections 23 and 24 of Act of Incorporation; validates mortgage deed and debentures secured thereby; provides for release of properties from mortgage and that mortgage need not be registered.

V.

57 Vic. chap. 93.

AN ACT RESPECTING THE TORONTO RAILWAY COMPANY.

[*Assented to 5th May, 1894.*]

Provides for change in number of directors; transfer of shares and stock, issue of new bonds, and makes provisions for taking vote on Sunday car question.

VI.

58 Vic. chap. 89.

AN ACT RESPECTING THE CITY OF TORONTO.

[*Assented to 16th April, 1895.*]

* * * * *

1. Notwithstanding anything contained in the Act passed by the Legislature of the Province of Ontario in the 55th year of Her Majesty's reign and chaptered 99, or any other Act of the said Legislature, the Corporation of the City of Toronto is hereby authorized to enter into an agreement with the Toronto Railway Company to haul the material removed by the scavenger department of the City of Toronto for a period of ten years, with the option of renewal for further periods of ten years or less, upon such terms as may be mutually agreed upon, and amongst others, that no percentage is to be payable to the City upon the price paid to the said Company for such hauling.

Authority to contract with Toronto Railway Co. for haulage of scavengers' material.

* * * * *

NOTE.—*An agreement was entered into between the City and The Toronto Railway, on the 17th day of June, 1895, for the removal of garbage for the period of ten years, but nothing was done under it. Previous to the making of this agreement certain experiments had been carried on by the Company, and in the year 1899 the Company commenced an action against the City to recover $2,273.65, the cost of certain cars and material alleged to have been furnished to the City for the purpose of such experimenting, and the cost of laying down certain tracks and switches. The action was tried in March, 1905, before Mr. Justice Magee, and judgment was given on 10th April, 1905, dismissing the action. On October 16th, 1905, an appeal by the plaintiffs to the Divisional Court was argued and dismissed.*

VII.

60 Vic. chap. 81.

AN ACT RESPECTING THE CITY OF TORONTO.

[*Assented to 13th April, 1897.*]

* * * * *

Island car service agreement authorized.

4. (1) A certain agreement made between the said Corporation and the Toronto Railway Company respecting the Island service, and which is printed as Schedule B hereto, is hereby validated and confirmed, and the said parties thereto are hereby empowered to do all acts necessary to give effect to the same, and the said corporation is hereby empowered to expropriate such lands or such interests therein, as they may deem necessary to carry out the said agreement, making such compensation therefor as the owners thereof may be entitled to, upon the same being determined under the arbitration clauses of *The Municipal Act*, and all sections in the said Act as to expropriation and arbitration shall apply, and also *The Municipal Arbitrations Act*.

(2) The Council of the Corporation of the City of Toronto shall before undertaking the erection of any bridge or bridges, tunnel or other means of street railway communication with the Island, obtain the approval and consent of the Governor-General of Canada in Council, and shall cause proper plans of survey to be made, and proper plans, profiles, drawings and specifications of the work to be done and improvements to be made, to be prepared, and procure proper estimates of the probable cost of the lands to be taken and of the amount of damages to lands injuriously affected, together with proper estimates of the probable cost of the whole of the works necessary to connect the present street railway system with the proposed Island railway other than the extension of the tracks of the said railway on the streets of the City, and shall cause the same to be duly published for the information of the ratepayers; and they shall also submit the question of undertaking the said works at the estimated cost to a vote and procure the assent of the electors qualified to vote on money by-laws under the provisions of *The Consolidated Municipal Act 1892*, and amending Acts in that behalf.

(3) Nothing in this Act or the said agreement contained, or done in pursuance thereof, shall prejudice or affect the rights and positions of the bondholders of the said railway company, or of the trustees of the mortgage securing said bonds.

(4) Except in the case of the Queen's Wharf, nothing in this section contained shall require the consent of the Governor-General of Canada in Council, or the approval of the ratepayers to any work necessary or money to be expended in providing approaches to the water's edge to bring the street cars to the different steamboat landings.

5. The agreement made between the said Corporation and the Toronto Railway Company respecting the operation of street cars upon the Lord's Day in the City of Toronto, and which is printed as Schedule "C" hereto, is hereby validated and confirmed, and the said parties thereto are hereby declared to have and to have had power to do all acts necessary to give effect to the same; but this section and the agreement hereby confirmed is not to have any force or effect unless and until a By-law embodying the same has been approved of by the voters as provided in the Act passed by this Legislature in the 57th year of Her Majesty's reign and chaptered 93. Provided, however, that the confirmation of the said agreement or any clause, matter or thing therein contained, or any vote taken thereunder or in pursuance thereof, shall not legalize the running of cars upon the Lord's Day, if the same is a contravention of the Revised Statute, chapter 203, intituled *An Act to prevent the Profanation of the Lord's Day*, and shall not confer on the railway company any greater right or power to run a Sunday car service, if the vote should be in favor thereof, than the railway company would be entitled to under the legislation of 1892 and 1894, and a vote in favor of Sunday cars taken thereunder. The said Corporation is hereby authorized to impose from time to time penalties, as provided for in the said agreement, and to collect the same if not paid by the said Company, by action, as if the same were a debt due by the Company to the Corporation, and any penalty imposed by or under the provisions of the said agreement shall not be relieved against any Court or Judge. The County Court Judge of the County of York, and the Court of Appeal of the Province of Ontario, respectively, shall have jurisdiction to, and it shall be their duty to, hear and determine the matters in the said agreement provided to be determined by them, and no objection shall be competent to either party to the said agreement as to the jurisdiction of the said County Court Judge and the Court of Appeal respectively.

Sunday car agreement confirmed.

Proviso.

Rev. Stat. c. 203.

* * * * *

ISLAND CAR SERVICE AGREEMENT.

Schedule B.

This Indenture, made in triplicate the 26th day of March, A.D. 1897, between the Corporation of the City of Toronto, hereinafter called the "Corporation," of the first part, and the Toronto Railway Company, hereinafter called the "Company," of the second part.

1. Whereas, by an Indenture made the first day of September, 1891, between the said Corporation of the first part, and George Washington Kiely, William McKenzie, Henry Azariah Everett and Chauncey Clark Woodworth, thereinafter called the Purchasers of the second part, the said Corporation for the consideration therein expressed did grant unto the said Purchasers, as therein provided, the right to operate surface street railways in the City of Toronto, excepting on the Island, and other excepted portions of the City as therein specified:

2. And whereas the said Purchasers were duly incorporated by an Act of the Legislature of the Province of Ontario, entitled "An Act to Incorporate the Toronto Railway Company, and to confirm the Agreement between the Corporation of the City of Toronto and George W. Kiely, William McKenzie, Henry A. Everett and Chauncey C. Woodworth," and the said Purchasers have since duly granted and assigned to the Company the said agreement, and all the properties, rights and privileges therein mentioned, subject to the obligations, conditions, agreements and provisoes contained in the said Act of Incorporation and the several schedules incorporated therewith;

3. And whereas by Report Number 2 of the Special Committee of the Council of the said Corporation *re* Sunday Car Agreement, adopted by the Council on the thirtieth day of December, 1896, it was recommended that an agreement should be prepared respecting the construction and operation of an Island service in pursuance of the proposition contained in a Message of His Worship the Mayor and certain correspondence between His Worship and Mr. George H. Bertram, on behalf of the Toronto Railway Company, and that the agreement should be approved of by the said Council;

4. And whereas this agreement has been prepared in pursuance of such correspondence, and as such has been approved of by the Council of the said Corporation on the 25th day of March, 1897;

5. Now therefore this Indenture witnesseth that the Corporation and the Company do by these presents mutually and respectively agree with each other, and with the successors and assigns of each other, that the Island, sometimes known as "Hiawatha," be included in the agreement of the first day of September, 1891, as though the Island had not been excepted therefrom but had been included therein, and that all the conditions, agreements and stipulations contained in the said agreement, dated the first day of September, 1891, and in the Act of Incorporation of the Company and the schedules incorporated therewith, inclusive of the obligation of the Company to pay the mileage payments and percentages on the gross receipts under the ninth condition of sale of the street railway franchise of the City of Toronto, and under the fifteenth and sixteenth paragraphs of the said agreement, shall be all valid, binding and operative conditions, agreements and stipulations between the Corporation and the said Company, and shall relate to and govern all the mutual and respective obligations of the Corporation and the Company, except so far as the same are varied by this agreement.

6. It is mutually agreed by and between the parties hereto, that the Company will extend their track or tracks on the mainland to the water's edge and operate their cars thereon so as to meet the City's requirements for a convenient and efficient Island service to and from the Island by ferries, the City to provide any necessary right of way and to bear any further expense to so reach the water's edge other than providing the necessary material for the tracks, rails, poles, wires and other necessary equipment of the railway, and laying, constructing or erecting

the same, and operating the cars on the tracks so laid, and as soon as the Council provides a bridge or bridges or other means of communication sufficient to meet the necessities of traffic, the Company will extend their track or tracks to and over such bridge or bridges, or other means of communication to the Island, and lay, extend and locate their tracks upon the Island from time to time where and in such places as in the opinion of the City Engineer and the City Council may be considered reasonable and necessary; but in case of any dispute as to what may be reasonable and necessary, the reasonableness and necessity shall be settled and finally determined by the person who shall occupy the position of the President of the High Court of Justice for Ontario, or who may perform the duties and have the powers now possessed by that person, or in case such person refuses so to act, then by such person as he may appoint upon the application of either of the parties hereto, upon notice to the other party hereto.

7. And the said Company, for themselves, their successors or assigns, covenant, promise and agree to and with the said Corporation that if the said Company shall neglect or refuse, within a period of three months after notice so to do, to extend their track or tracks on the mainland to the water's edge, or to extend their track or tracks over such bridge or bridges or other means of communication, or to connect the present City service with the said tracks upon the Island, or to lay and extend their tracks upon the Island from time to time as in the opinion of the City Engineer and the City Council may be reasonable or necessary, then and in either or any of such cases, the City Engineer may, either with or without notice, take such steps, procure such material, teams and men, and do such work or things as he may deem advisable to provide such track or tracks, or any or either of them, or towards carrying out this agreement, and any and all expenses so incurred shall be a debt due from the said Company to the said Corporation, and may be recovered as such in any Court of competent jurisdiction;

8. It is also mutually agreed by and between the parties hereto that the right of way upon the Island and the means of access from one part thereof to other parts thereof are to be provided by the said Corporation and need not be otherwise public highways, and the said Corporation is also to make and construct such width of roadway thereon as may be considered necessary by the City Engineer, but the said Corporation shall be under no obligation to construct any particular width of roadway upon the Island.

9. It is also mutually agreed by and between the parties hereto that the Company, immediately after the Corporation has supplied a bridge or bridges or other means of communication to the Island, will proceed, upon instructions from the City Engineer, to construct and operate a railway or railways to and upon the Island and upon the approaches to the water's edge or over the said bridge or bridges, as may be necessary to carry passengers thereon, and will carry passengers over and operate their entire system and every part thereof at the fares and upon the terms and conditions provided for in the original agreement of the 1st of September, 1891, and any amendments thereto.

10. It is hereby mutually agreed that the Company shall not be required to operate their cars on the Island between the first day of November and the first day of April in each year; but this shall not in any way lessen the Company's obligation to pay full mileage for the entire year.

11. It is further agreed that the Company will not be required to construct or extend their tracks upon the Island, between the 1st day of September, 1911, and the 31st day of August, 1921.

12. The parties hereto agree to apply from time to time, as the Council of the City of Toronto may consider necessary, to the Legislature of the Province of Ontario to validate and confirm this agreement, and each party hereto will assist in obtaining such legislation.

In witness whereof the parties hereto have affixed their respective seals and set to the signature of the proper officers in that behalf.

Signed, Sealed and Delivered in the presence of "CHARLES CURTIS," as to Mayor and Treasurer.

ROBERT J. FLEMING, *Mayor.* [SEAL]

R. T. COADY, *Treasurer.*

F. L. WANKLYN, *Manager.*

J. C. GRACE, *Sec.-Treas.* [SEAL]

SUNDAY CAR AGREEMENT.

Schedule "C."

This Indenture, made in triplicate the twenty-sixth day of March, in the year of our Lord, one thousand eight hundred and ninety-seven.

Between—The Corporation of the City of Toronto, hereinafter called the "Corporation," of the First Part.

And—The Toronto Railway Company, hereinafter called the "Company," of the Second Part.

1. Whereas by an Indenture made the first day of September, 1891, between the said Corporation of the first part, and George Washington Kiely, William

McKenzie, Henry Azariah Everett and Chauncey Clark Woodworth, thereinafter called the "Purchasers" of the second part, the said Corporation, for the consideration therein expressed, did grant unto the said Purchasers, as therein provided, the right to operate surface street railways in the City of Toronto, upon the terms and conditions therein mentioned;

2. And whereas the said Purchasers were duly incorporated by an Act of the Legislature of the Province of Ontario, intituled "An Act to Incorporate the Toronto Railway Company and to Confirm an Agreement between the Corporation of the City of Toronto and Geo. W. Kiely, William McKenzie, Henry A. Everett and Chauncey C. Woodworth," and the said agreement, with the conditions, documents and schedules therein referred to, is validated, construed and limited as therein mentioned;

3. And whereas the said Purchasers have duly granted and assigned to the Company the said agreement, and the properties, rights and privileges therein mentioned, and the said Company has been duly substituted as the contracting party with the said Corporation, in the place and stead of the said Purchasers, under the said agreement, and the said agreement, conditions and documents contained in the said Act of Incorporation, form the existing contract between the Corporation and the Company in regard to the street railway privilege of the City of Toronto;

4. And whereas it is provided in Clause 40 of the conditions annexed to the said agreement that no car shall be run on the Lord's Day until a Sunday service has been approved of by the citizens by a vote taken on the question;

5. And whereas, by section 1 of the said Act the Company is declared entitled to the exclusive right and privilege of using and working the street railways in and upon the streets of the said City, with certain exceptions therein set out, for the full period of thirty years from the first day of September, 1891, on all days except Sundays, and no longer, but subject nevertheless to all the conditions, provisoes and restrictions in the said agreement expressed or contained, and as thereinafter mentioned, and it is therein provided that notwithstanding anything in Schedule "A" thereto, or in the said Act contained, no street car shall run on the Lord's Day, but that nothing therein contained shall extend to prohibit the doing of any act which is not a contravention of the Revised Statute, chapter 203, intituled "*An Act to prevent the Profanation of the Lord's Day*," if and when such Act shall have been approved of by the citizens by a vote taken on the question, as provided by the said agreement;

6. And whereas, a largely signed petition has been sent in to the Council of the said Corporation asking to have submitted to the vote of the citizens the question of operating a Sunday service, and it is deemed expedient to enter into an agreement as to such Sunday service, and the character and extent thereof, as provided by the Act 57 Victoria, chapter 93, and this agreement is being entered into upon the assumption that the running of cars upon the Lord's Day is an act not prohibited by the Lord's Day Act;

7. Now therefore this Indenture witnesseth that the Corporation and the Company do by these presents mutually and respectively accept, declare and agree with each other, and with the successors and assigns of each other that all the conditions, agreements and stipulations contained in the said agreement dated the first day of September, 1891, and in the Act of incorporation of the Company and the schedules incorporated therewith, inclusive of the obligation of the Company to pay the percentages on the gross receipts under the ninth condition of sale of the Street Railway franchise of the City of Toronto, and under the sixteenth paragraph of the said agreement, are all valid, binding and operative conditions, agreements and stipulations between the Corporation and the Company, and do and shall relate to and govern all the mutual and respective obligations of the Corporation and the Company, on Sunday as on every other day of the week, except so far as the same are varied by this agreement.

8. It is mutually agreed that the cars shall be run upon Sundays over the whole and entire system of street railway tracks in the City of Toronto, and any extensions of the same which may be hereafter made during the continuance in force of the agreement hereinbefore in part recited, and shall include a night service if deemed necessary by the City Engineer and the City Council.

9. It is also mutually agreed that the speed of the cars and the number of cars to be run per hour which are necessary on each main line or branch, or any part thereof, shall be as determined by the City Engineer from time to time, and approved of by the Council.

10. It is also mutually agreed by and between the parties hereto that the cars shall not run at a greater speed than four miles an hour while passing any place of worship or Sunday School building during the hours of all services, and the gong or gongs thereon shall not ring within 200 feet of any place of worship or Sunday School building during the hours of all services; provided that the authorities of such Church or Churches erect a sign on the street line, satisfactory to the City Engineer, announcing their hours of service, and that the performance of this clause may be specifically enforced by the order and injunction of the High Court of Justice.

11. The service upon any street, or portion of the same, may be discontinued if recommended by the City Engineer and mutually agreed upon by the City Council and the Railway Company, but not otherwise, and such service, or any portion or portions thereof, may be thereafter restored by the order of the Engineer with the approval of the City Council as aforesaid, when such may be considered advisable or necessary.

12. And the said Company, in consideration of the premises and also in consideration of the said Corporation submitting the question of the running of the cars upon Sunday to the vote of the citizens, doth for itself, its successors and assigns, covenant, promise and agree with the said Corporation, that the said

Company its successors and assigns, will not require or permit any of its employees to work in its service more than ten hours per day or more than sixty hours per week, all of which sixty hours' work is to be performed in six days of each week, and that no employee having worked upon six days shall be required or permitted to resume work until he has been a complete day of twenty-four consecutive hours off work, which twenty-four consecutive hours shall be computed from 5.30 o'clock a.m. of such day.

Provided, however, that work rendered necessary by exceptional accidents, unusual storms or civil commotions, or for operating the cars during the time of the Industrial Exhibition not exceeding 12 days in each year, requiring the employment of men for extra work, certified by the City Engineer, or by the County Judge, as hereinafter provided, to have been necessary in the reasonable operation of the railway, shall not be held to be a violation of this section, nor shall the employment of the Superintendent and one Assistant, the Chief Engineer and one Assistant, the Electrician and one Assistant, and the Roadmasters (not to exceed six in number), while engaged in the necessary work of the Company for parts of seven days of the week be held to be a violation hereof; Provided, however, that either party hereto may within two weeks after the decision of the City Engineer in any matter provided for in this section, communicated to both parties hereto, appeal from such decision to the County Judge, whose decision shall be final and binding upon both parties hereto, and in the event of no appeal being taken within the time aforesaid, the decision of the said City Engineer shall be final and binding upon both parties hereto.

(1) The word "week" in this agreement means any seven consecutive days whether the same begin with Sunday or any other day of the week.

(2) And the Company, for itself, its successors and assigns, covenants with the said Corporation, that if at any time any Judge of the County Court of the County of York, upon a summary application to him by the said Corporation, of which two days notice in writing shall be given to the Company, shall adjudge and report to the Council of the said Corporation that there has been a substantial breach of the said covenant, promise and agreement which could reasonably have been avoided, then the Council of the said Corporation, within three months after the receipt of such said report (or after the final decision of the said question in the event of an appeal) but not afterwards, may pass a resolution annulling any right acquired by the said Company under and by virtue of the said vote or of this agreement to run street cars on Sunday, and upon the passing of such resolution, any such right which may be so acquired by the said Company shall by virtue thereof cease and determine. Provided, however, that in lieu of passing such resolution annulling the rights of the Company to run Sunday cars, the said Council may, for each and every such breach, impose upon the said Company a penalty of $500, or such lesser sum (not less than $100) as the said Council may deem reasonable.

(3) And the Company for itself, its successors and assigns, doth covenant, promise and agree with the Corporation that it will not after the passing of such resolution attempt to exercise any right to run street cars on Sunday which may be acquired by virtue of the said vote, or of this agreement, and the running of street cars on Sunday by virtue of such authority may, after the passing of such resolution, be restrained by the order and injunction of any Court of competent jurisdiction, or in the event of the said Council imposing a penalty as hereinbefore is provided, the Company will pay the amount thereof within seven days after being notified of the action of the Council, and if not paid, the said Corporation may recover the same with costs of action in any Court having jurisdiction to the amount of said penalty.

(4) Upon the hearing of such application, the said County Court Judge may summon witnesses, take evidence upon oath, order production of books and papers, and exercise all the other powers mentioned in Clause Forty-three of the conditions of sale forming part of the existing agreement between the Company and the Corporation, and also the powers of an arbitrator under the Acts respecting arbitrations and references, and he shall report to the Council the evidence and his decision thereon and the grounds thereof, and either the Corporation or the Company may, within one month after the date of said report, appeal from the decision of the said Judge to the Court of Appeal for Ontario, and the decision of the Court of Appeal shall be final, and the said parties hereto consent to the said County Court Judge and the said Court of Appeal having jurisdiction to hear, try and determine the matters hereinbefore agreed to be submitted to them respectively.

(5) Provided always and it is hereby declared and agreed by and between the said parties that these presents are predicated upon the vote of a majority of the citizens being in favor of a Sunday car service, and of a Sunday car service being established in pursuance thereof, and that in the event of any right which may be acquired by the Company under and by virtue of the said vote being annulled by resolution of the Council, as hereinbefore mentioned, the original position and rights of the citizens and of the Company and the Corporation under the said existing agreement and under the Act of Incorporation of the Company and subsequent legislation in relation to the question of a Sunday car service shall be restored and shall not be affected or prejudiced by reason of the premises.

13. Any ticket issued by the Company under the said agreement of the 1st of September, 1891, except the ones sold at the rate of eight for twenty-five cents, may be used and shall be good at any time on Sunday, but a special ticket shall be issued and sold by all conductors and at the offices of the Company on Sunday, at the rate of seven of them for twenty-five cents, and such tickets may be used upon all cars running upon Sundays, and also upon other days within the hours or times on which the class of tickets sold at the rate of eight for twenty-five cents may be used.

14. In the event of a majority of the citizens voting in favor of a Sunday car service, and the By-law embodying this agreement having passed the Council

of the said Corporation, the said Company covenants, promises and agrees to and with the said Corporation, that the said Company will upon each and every Sunday thereafter while this agreement remains in force provide a service of cars upon each line of railway operated, or that may hereafter be operated, by the said Company in the City of Toronto, during the hours and upon the terms and conditions set out in the said agreement of the first of September, 1891, except as varied by this agreement; and that the said agreement of 1891, with the amendments or alterations provided by this agreement, shall apply to the operation of cars upon Sundays.

15. This agreement is provisional, and shall not have any force or effect until the By-law embodying the provisions thereof has been assented to by a vote of the citizens taken thereon, as provided for in the Act passed by the Legislature of the Province of Ontario in the fifty-seventh year of Her Majesty's reign, and chaptered 93.

16. In the event of any Court of competent jurisdiction in the Province of Ontario holding that the said Corporation had not power to enter into this agreement, or to authorize the running of cars upon Sunday, or should any cause or causes arise beyond the jurisdiction of this Council which may prevent the running of street cars on Sundays, then and in any or either of such events the said Company shall not have any claim, and the said Company agrees that it will not make any claim against the said Corporation for entering into this agreement, or for the privilege thereby granted being put an end to by such decision or cause.

17. In the event of a By-law being passed as herein provided, the parties hereto agree to apply to the next session of the Legislature of the Province of Ontario to validate and confirm this agreement, and to authorize the said Corporation to impose a penalty as herein provided for, and to collect the same by action if not paid by the said Company, and to provide that any penalty imposed by or under the provisions of this agreement, shall not be relieved against by any Court or Judge; also, to confer upon the County Court Judge, and Court of Appeal respectively, jurisdiction to hear and determine the matters herein provided to be determined by them, and each party will assist in obtaining such legislation.

In witness whereof the parties hereto have hereunto set their Corporate Seal under the hand of their proper officers.

Signed, Sealed and Delivered
in the presence of
"CHARLES CURTIS,"
as to the Corporation.

"WM. LAIDLAW."
as to execution by the Company.

ROBERT J. FLEMING,
Mayor. [SEAL.]

R. T. COADY,
Treasurer.

WM. MCKENZIE,
President [SEAL]

J. C. GRACE,
Sec'y-Treas.

VIII

63 Vic. chap. 102.

AN ACT RESPECTING CERTAIN MATTERS PERTAINING TO THE CITY OF TORONTO.

[*Assented to 30th April, 1900.*]

Section 1 of this Statute amends the Act of Incorporation, 55 Vic. chap. 99, by adding thereto section 28.

* * * * *

Specific performance of contract with Toronto Railway Co.

5. Either the Municipal Corporation of the City of Toronto or the said The Toronto Railway Company in case of neglect or failure on the part of the Toronto Railway Company, or on the part of the Corporation of the City of Toronto, as the case may be, to observe and perform any of the covenants, agreements, obligations and provisions contained in the said Act, and in the said agreement and conditions incorporated therewith, may bring an action to compel the performance of or to restrain the violation of any of the said covenants, obligations, agreements or provisions, and the Court before whom the action shall be tried shall, notwithstanding any rule of law or practice to the contrary, enquire into such alleged breach and determine the nature and extent thereof, and in case it is found that the act or omission complained of constitutes a breach of the said covenant, obligations, agreements or provisions the Court shall make an order specifying what things shall be done or forborne by the defendants as a substantial compliance with the said Act, agreements and conditions, and every such order shall be enforceable in the same manner and to the same extent as an injunction or mandamus granted by the Court.

IX.

1 Edward VII., chap. 25, as amended by 3 Edward VII., chap 17.

AN ACT TO AMEND THE STREET RAILWAY ACT.

[*Assented to 15th April, 1901.*]

Sections 1 and 2 of this Statute are made part of the Company's special Act by 2 Edward VII., chapter 26.

Rev. Stat. c. 208, s. 18, sub-s. 4.

1. Sub-section 4 of section 18 of *The Street Railway Act*, as enacted by section 1 of the Act, passed in the 63rd year of the reign of Her Late Majesty Queen Victoria, chapter 31, is repealed and the following substituted therefor:

"(4) The company, when operating any portion of its line by means of electricity, shall from time to time adopt and use in the front of each motor car a fender, which shall be of a design approved of by the Lieutenant-Governor-in-Council from time to time upon a report by the Engineer of the Department of Public Works for Ontario as suitable for use by the company, having regard to the efficiency of such fender for life saving purposes, and to the location of the company's line, and the speed at which the company's cars may be run. Fenders

(*a*) The fender so approved of by the Lieutenant-Governor-in-Council shall be adopted and used upon the cars of the company within the time fixed by the Order-in-Council approving of the same, or by any Order-in-Council extending the said time. Provided, however, that when any street railway company, *in the case of cities with a population of less than 20,000 and towns and incorporated villages*, has entered into an agreement with a municipal council providing for the use of a fender, then this Act shall not apply so as to require any other or different fender to be supplied than is provided for in the said agreement. *Provided that where the cars of a Company are equipped with fenders of a class so approved by the Lieutenant-Governor-in-Council the Company shall not be liable for non-compliance with any by-law or agreement relating to the class of fenders to be used in any City or any requirement of the Engineer or other officer of the municipality under any by-law or agreement."* 3 *Edward VII. chap. 17, s. 1.*

2. Section 18 of *The Street Railway Act* is amended by adding thereto the following sub-section:— Penalties for not providing guard wires, fenders, etc.

"(6) The company shall pay to the corporation of the municipality in which such road is operated the sum of $10 for each day in which any motor car is operated within such municipality without having such a fender thereon except in cases of accident or unavoidable necessity; such sum or sums to be recovered from such company in a civil action."

3. Sub-section 3 of section 18 of the said Act is amended by adding after the word "section" in the first line thereof the following words and figures:— "and section 19." Rev. Stat. c. 208, s. 18, sub s. 3, amended.

4. Sub-section 1 of section 46 of the said Act is amended by substituting the words and figures "18 and 19" for the words and figures "and 18" in the fourth line thereof. Rev. Stat. c. 208, s. 46, subs. 1.

* * * * *

X.

4 Edward VII. chap. 93.

AN ACT RESPECTING THE TORONTO RAILWAY COMPANY.

[*Assented to 26th April, 1904.*]

Section 1 and 2 empower Company to form a reserve fund out of surplus earnings; to acquire shares, bonds, etc., of suburban Companies and to guarantee the bonds, etc., of such Companies.

Section 3 amends the Act of Incorporation by adding thereto section 29.

* * * * *

Rights of City at termination of franchise not affected.

4. Neither this Act nor anything authorized to be done thereunder shall prejudice or affect the rights of the Corporation of the City of Toronto to take over the property of the said Company as provided in the Act incorporating the Company and the agreement and other documents made schedules thereto.

XI.

JUDGMENTS AS TO WOODEN POLES.

IN THE HIGH COURT OF JUSTICE—QUEEN'S BENCH DIVISION.

Before the Honorable Mr. Justice Meredith. } Thursday, the 6th day of October, A.D. 1892.

Between THE CORPORATION OF THE CITY OF TORONTO.

Plaintiffs.

AND

THE TORONTO RAILWAY COMPANY.

Defendants.

This case coming on to be heard this present day in presence of Counsel for both parties upon opening of this matter, and upon reading the pleadings, and Counsel aforesaid consenting thereto.

This Court doth order that the matters in issue herein be and the same are disposed of as follows:

1. All the present poles used by the defendants and the use thereof shall be and be considered as only temporary.

2. The standard iron poles shall be in no respect inferior to the sample iron pole now erected on Jarvis Street, opposite the City Hall, and shall be of sufficient height to keep all the trolley wires dependent therefrom at least eighteen feet at their lowest point above surface of pavement, and shall be finished on top with a neatly turned wooden top or other top finish approved by the City Engineer of the plaintiffs.

3. The standard wooden pole shall be octagonal, and in no respect inferior to the sample wooden pole now erected on Jarvis Street, opposite the City Hall, or may in any locality designated by the said City Engineer be a round dressed pole to be approved of by the said City Engineer.

4. All poles erected and used by the Company shall be and shall be kept by the Company at all times straight, plumb and perpendicular, and in good condition.

5. Standard iron poles shall within a time to be specified by the City Engineer be erected and maintained by the defendants on the following streets and parts of streets, viz.: Yonge Street, from Front Street to Davenport Road, inclusive; King Street, from Parliament Street to Bathurst Street, inclusive; Queen Street, from Parliament Street to Bathurst Street, inclusive; Front Street, from Jarvis Street to Simcoe Street, inclusive; York Street, from Queen Street to the Esplanade, inclusive; Church Street, from Front Street to Queen Street, inclusive; Sherbourne Street, from Bloor Street to Elm Avenue, inclusive; and upon all such streets in the vicinity of the Union Station as may from time to time be ordered by the said City Engineer.

6. Standard wooden poles may be erected by the defendants on other streets and parts of streets (or the wooden poles now erected and in use by the defendants may be continued, provided the same are equal to the standard pole and the location thereof is approved by the said City Engineer); but the said City Engineer may from time to time, with the approval of two-thirds of the members of the City Council present and voting at any meeting, direct the substitution therefor of standard iron poles at the rate of not more than one hundred and fifty poles per annum, provided that no such substitution shall be ordered by the said Engineer without notice to the defendants, or without their having had an opportunity of being heard in reference thereto. In case the said City Engineer does not direct the substitution of the full number of one hundred and fifty poles in any one year, the right to give such direction at any time within the two following years shall exist, but not afterwards.

7. The provisions of clause six shall apply only to streets upon which tracks are now laid. On any streets or sections of streets upon which tracks may hereafter be laid, the Company shall erect standard iron or wooden poles, as the City Engineer may from time to time direct, and he shall also have the power under the provisions of the preceding paragraph to order the substitution of iron poles for wooden poles at any time on such street or section of street.

8. In addition to the substitution provided for in Clauses 6 and 7, when any street or section of a street upon which wooden poles are used is to be paved next to the kerb with asphalt, stone, scoria or other like permanent pavement, iron poles shall, at the option of the City Engineer, be substituted for wooden poles on such street or section of said street, and the defendants to make such substitution on the streets or sections of streets to be so paved within such time as may be specified by the said City Engineer; but this provision shall not extend to the paving of sidewalks.

9. The standard distance between the poles shall not be less than one hundred and ten feet on straight lines, and all substituted poles shall be planted in the same place as the removed poles unless otherwise directed by the said City Engineer.

10. All openings made by the defendants in streets and sidewalks shall be made good and all surplus material removed and the street or sidewalk restored at once to its original condition, to the satisfaction of the said City Engineer, otherwise the said City Engineer may do the same at the expense of the defendants.

11. All poles shall be kept painted as the said City Engineer shall direct, and shall be numbered on the outer or street side in plain figures not less than two inches long, and no advertising shall be allowed on any pole.

12. No trolley wire shall be or be allowed to remain at its lowest point at a less height than eighteen feet above the surface of the street, except in passing through subways or at such other points as the said City Engineer may in writing permit.

13. Everything herein provided for shall be done under the supervision of the said City Engineer, and in case the defendants shall, in the opinion of the said City Engineer, fail or refuse to observe and perform any of the terms of this agreement, the said Engineer may give the said defendants a written notice, specifying his requirements, and in case the defendants fail or refuse to comply with such notice within twenty-four hours, the said Engineer may do the work himself and the question of liability for all expenses incurred in connection therewith may be determined by the Judge of the County Court of the County of York, in the manner and with the powers as to costs and otherwise specified by section 43 of the agreement, dated September the 1st, 1891, and made between the plaintiffs and Messrs. Kiely, Everett, McKenzie and Woodworth.

14. All other matters of complaint in this action are withdrawn by mutual consent and the rights of all parties in respect thereof are preserved.

15. And this Court doth not see fit to make any order as to the costs of this action.

XII.

IN THE HIGH COURT OF JUSTICE—COMMON PLEAS DIVISION.

Before the Honorable Mr. Justice Ferguson. } Friday, the 25th November, A.D. 1892.

Between THE TORONTO RAILWAY,

Plaintiffs.

AND

THE CORPORATION OF THE CITY OF TORONTO,

Defendants.

Upon motion of Mr. Laidlaw, Q.C., of counsel for the plaintiffs, to continue the injunction granted herein by Chief Justice Armour on Thursday, the 17th day of November, A.D. 1892, until the trial or other disposition of this action, after one enlargement, and upon hearing read the affidavits of W. E. Davis and J. C. Grace filed on the 17th day of November in support of the motion and the exhibits in said affidavits referred to, and the further affidavits of Henry A. Everett, Edgar F. Chapman, Noel Marshall and J. C. Grace, filed by leave in support of the motion to continue the injunction and the interim injunction order granted herein, and the examinations and cross-examinations of Edward H. Keating, J. C. Grace, Henry A. Everett, Edgar F. Chapman, John Jones, and W. J. Little, taken in opposition to the motion in presence of counsel for the defendants, upon hearing counsel for all parties and after argument and negotiations, consent minutes being filed:

1. This Court doth order that the injunction motion do stand to the trial.

2. And this Court doth further order that the plaintiffs be at liberty to put up during the present season on Queen Street east of the Don and on Bloor Street West, and on such other streets as the City Engineer may allow, temporary poles of the kind they are now using to complete the electric service provided for on the above streets respectively.

3. And this Court doth further order that all poles erected since 12th November, 1892, and all poles to be erected by the Company as aforesaid, are hereby declared to be temporary poles within the meaning of the judgment dated the 6th October, 1892, and all the provisions of the said judgment shall apply to the said poles, and the Company shall on or before June 1st, 1893, remove all such poles aforesaid as are not equal to the standard pole as specified and provided for in said judgment, and shall by said date replace the same by standard or approved poles, as specified in said judgment, but said time may be extended by the City Engineer; if said poles are not so replaced on or before said date, a mandatory order shall issue to compel the Company to comply with this judgment.

4. And this Court doth further order that the claims of the City against the Company and of the Company against the City in this action, including the cost of the interim injunction order and of this motion to continue the interim injunction, be reserved until the trial, and that the suspension of the operation of the City's injunction and anything done by either party hereunder shall not prejudice or affect either of their rights in this action.

Settled.
P. J. B.

By the Court,
(Signed) M. B. JACKSON,
Registrar.

XIII.

JUDGMENT *re* PERCENTAGES ON TICKETS SOLD AND ON ADVERTISING RECEIPTS.

Re the City of Toronto and The Toronto Railway Company.

Judgment of the Divisional Court, delivered by Armour, C.J., 4th March, 1893.

A dispute or difference of opinion having arisen between the City of Toronto and the Toronto Railway Company in respect of the matters hereinafter referred to, an application was made to the Judge of the County Court of the County of York, under the provisions of the agreement between the said parties, for his determination thereof, who gave the following judgment:

(Here followed judgment of County Judge.)

On the 6th day of February, 1893, Caswell for the City of Toronto, moved by way of appeal from the said judgment so far as it disposed of the liability of the Toronto Railway Company to pay to the City percentages on gross receipts from passenger fares received from the sale of tickets by the company, although the said tickets might not afterwards be presented on the cars of the said company, on the ground that the moneys received by the said company from tickets sold by them were gross receipts from passenger traffic obtained by the operation of the street railway system within the meaning of the contract and agreement between the said parties.

Laidlaw, Q.C., shewed cause.

And on the same day Laidlaw, Q.C., for the Toronto Railway Company, moved by way of appeal from the said judgment so far as it disposed of the question of liability of the Toronto Railway Company to pay to the City percentages on gross receipts from advertising rates within the cars of the railway company

during the period of the said agreement with the City on the ground that the said rates for advertising were not gross receipts derived from traffic obtained by operation of said street railway system.

Caswell shewed cause.

The special provision under which these questions arise is the following:—"16. And that they will monthly and every month during the term covered by this agreement on the first Monday of each month pay to the Corporation through its City Treasurer, the percentages in the said conditions and tender referred to, being the following percentages of the gross receipts from passenger fares, freight, express, and mail rates, and all other sources of revenue derived from the traffic obtained by the operation of the said railways."

We are of the opinion that, according to the true construction of the agreement between the parties, the money derived from the sale of tickets by the railway company becomes immediately upon its receipt by the railway company part of "the gross receipts from passenger fares" within the meaning of the above provision.

Were the contention of the railway company to prevail, the result would be that although they received the money for the tickets sold by them, the City would not receive its percentage upon the money so obtained, but would only receive it upon the value of the tickets presented by the passengers, and would not receive it upon the value of tickets which were never presented or which were lost or destroyed

And the railway company would then get the value of all such tickets as were never presented or were lost or destroyed, without paying the City any percentage thereon.

For we think it clear that the purchaser of tickets which were lost or destroyed would have no recourse against the railway company for their value.

We are of the opinion that the money derived by the railway company for permitting persons to exhibit advertisements inside their cars cannot be held to be a source of revenue "derived from the traffic obtained by the operation of the said railways."

The word "traffic," as applied to a railway, means the coming and going of persons or the transportation of goods upon the railway, and the revenue derived from permitting persons to exhibit advertisements inside their cars cannot be said to be revenue derived by the railway company from the coming and going of persons, or the transportation of goods obtained by the operation of the railway.

It was said that the intention of the parties was that the City should receive percentages of the gross receipts from all sources of revenue obtained by the operation of the said railways; if such was the intention it should have been so expressed and should not have been limited as it is to sources of revenue derived from the traffic obtained by the operation of the said railways.

We do not see how the provision above quoted can be, by any reasonable construction, held to include within its terms the revenue derived from permitting persons to exhibit advertisements inside the cars.

Both appeals will therefore be allowed, but as each succeeds there will be no costs.

XIV.

FORMAL JUDGMENT *re* "SPEED OF SUNDAY CARS."

IN THE HIGH COURT OF JUSTICE.

The Honourable
Mr. Justice Robertson. Tuesday, the 24th day of October, A.D. 1899.

BETWEEN

THE CORPORATION OF THE CITY OF TORONTO,
Plaintiffs.

AND

THE TORONTO RAILWAY COMPANY,
Defendants.

1. Upon motion this day made unto this Court by Counsel for the plaintiffs, in presence of Counsel for the defendants, for an order and injunction until the trial of this action, restraining the defendants, their servants and employees, from running the cars belonging to the defendants, upon Sundays past places of worship during the hours of service in such places of worship, at a greater rate of speed than four miles per hour, and especially from running them past Trinity Church East, situate on King Street east in the City of Toronto, at such greater speed; upon hearing read the affidavits of Charles Robert Cooper, George Stagg, James Alexander Henry, Cecil Brunswick Smith, Clarence Everett Cooper, William Arthur Scott Goss, James Connell Johnston and Thomas Caswell, filed in support of such motion, and the affidavit of William Henry Nix filed in answer: and Counsel aforesaid consenting that the said motion should be turned into a motion for judgment, and Counsel aforesaid consenting hereto, without prejudice to the defendants raising to any other similar action any defence they might now raise to this action:

2. This Court doth order and adjudge that, without prejudice as aforesaid, the defendants, their servants, agents and employees be and they are hereby enjoined and restrained during the continuance of the agreement between the plaintiffs and defendants relating to the running of Sunday cars, being an agreement bearing date the 26th day of March, 1897, and set forth in Schedule "C" to the Act passed by the Legislature of the Province of Ontario in the 60th year of Her Majesty's reign, chaptered 81, from running the cars belonging to the defendants past Trinity Church East, situate on King Street east in the City of Toronto, at a greater speed than four miles per hour while passing the said church during the hours of all services on Sundays as announced on a sign to be kept erected on the street line of King street aforesaid, satisfactory to the City Engineer, announcing such hours of service.

Judgment signed the 24th day of October, 1899.

(Sgd.) M. B. JACKSON,
Ent'd Oct. 26th, 1899,
J. B. 4 p. 471,
(Sgd.) R. F. KILLALY.

(Sgd.) A. F. MACLEAN,
Clerk Weekly Court.

XV.

FORMAL JUDGMENT IN THE "OVERCROWDING" CASE.

IN THE HIGH COURT OF JUSTICE.

The Honorable Mr. Justice Ferguson. | Wednesday, the Fourteenth day of January, 1903.

Between The Corporation of the City of Toronto, Plaintiffs; and

The Toronto Railway Company, Defendants:

This action having come on for trial this day before this Court, in presence of Counsel for the plaintiffs and defendants; upon hearing read the pleadings herein and Counsel for the plaintiffs and defendants consenting hereto, and it being admitted by Counsel aforesaid that in order to increase the service of the defendants' railway:—

(*a*) The defendants claim to have made and put into use since 1st January, 1901, 40 closed motor cars of the same design as car No. 836;

(*b*) And that the defendants are now making 20 more of such closed motor cars, and will put the said 20 cars into use before the 31st December, 1901;

(*c*) And that the defendants claim to have made and put into use 20 open motor cars of the same design as car No. 693:

(*d*) And it being further admitted that the plaintiffs do not by consenting hereto approve or disapprove of the said closed or open motor cars above mentioned;

1. This Court doth order and adjudge as follows:—

(*a*) That the defendants shall, for a continuous journey, give transfer tickets from day cars and accept the same on night cars, and shall for a continuous journey, give transfer tickets from night cars and accept the same on day cars.

(*b*) That the defendants shall furnish to the plaintiffs the statement referred to in the agreement between the plaintiffs and defendants set out in the pleadings herein, annually, in a form showing such details (if any), as may be settled by the Senior Judge of the County Court of the County of York, for which purpose this action is hereby referred to him. The costs of such reference to be in his discretion.

(*c*) That the defendants shall not use in their service after the date hereof, cars numbers 102, 104, 108, 116, 118, 126, 140, 142, 146, 148, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 186, 198, 200, 204, 208, 224, 226, 228, 230, 238, 256, 258, 260 and 262.

(*d*) That the defendants may use in their service from the date hereof until the 15th May, 1903, during the hours for limited tickets, but not otherwise, unless with the permission of the City Engineer from time to time, 35 of the cars numbered 2, 4, 6, 8, 10, 12, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 88, 90, 92, 94, 96, 98, 100, 114, 120, 122, 124, 128, 130, 132, 134, 136, 144, 150, 152, 154, 156, 158, 182, 184, 186, 188, 190, 192, 194, 202, 206, 210, 212, 220, 232, 234, 240, 242, 244, 246, 248, 250, 252, 264 and 266, to be selected by the City Engineer of the City of Toronto and maintained by the defendants in as good repair as at this date.

(*e*) The defendants shall not use in their service after the 15th May, 1903, any of the said cars numbered in paragraph (*d*) unless with the written permission of the City Engineer from time to time.

(*f*) Nothing herein contained shall alter, vary or affect any of the agreements, rights or obligations of the parties hereto to each other as to the number or designs of cars to be used on the defendants' railway or otherwise, except to the extent necessary to give effect to this judgment, and save as aforesaid this Court doth not make any order as to costs.

Judgment signed the fourteenth day of January, 1903.
M. B. JACKSON,
Clerk of C. & P.

GEO. S. HOLMESTED.
Registrar.

Entered January 16th, 1903.
J. B. 6, P. 306.
R. F. KILLALY,

XVI.

"MILEAGE" ACTION—MAIN QUESTION.

Judgment of the Lords of the Judicial Committee on the Appeals of the Toronto Railway Company v. the Corporation of the City of Toronto, from the Court of Appeal of Ontario; Delivered 2nd August, 1901.

Present at the Hearing: Lord Hobhouse, Lord Davey, Lord Robertson, Sir Richard Couch. **[Delivered by Lord Hobhouse.]**

The controversy between the parties to this appeal has sprung out of a deed of agreement bearing date the 1st of September, 1891, made between the plaintiffs below who are now respondents, and the defendants below who are now appellants, and confirmed by an Act of the Legislature of Ontario, 55 Vic. chap. 99. By it the plaintiffs grant to the defendants certain street railways in Toronto and other property upon the terms specified. The parties have disagreed as to the meaning of those terms in many respects; but there remain now only three points on which the defendants contend that the judgment of the Court of Appeal ought to be varied.

The first point, apparently the most important, relates to the rent payable by the defendants. By the 15th clause of the agreement the defendants covenant "that they will yearly and every year during the term covered by this agreement pay to the Corporation through its City Treasurer the sum of $800 per annum per mile of single track, or $1,600 per mile of double track, occupied by the rails of the said railways within the said limits (not including turn-outs, the length of which are to be approved of by the City Engineer)." A dispute has arisen as to the meaning of the word "turn-outs." The plaintiffs say that it means a side track on which a train can be shifted in order to let another train on the main track pass it. The defendants contend that it includes all curves and deviations by which carriages are enabled to pass from one line of rails to another.

The term is a term of art, and both books and oral evidence taken at the trial have been adduced to explain it. The effect of the evidence is to show that it is most properly and generally used in the sense alleged by the plaintiffs, though it may be casually used to denote any kind of deviation. The language of conditions of sale which are made part of the agreement supports the same conclusion; for it speaks of turn-outs and curves in a way implying that the latter are not included in the former. Both Courts have held that the plaintiffs are right in their construction.

Their Lordships have difficulty in understanding on what grounds the defendants maintain their view. The ground most clearly stated is that turn-outs as interpreted by the plaintiffs apply only to single tracks, whereas all the defendants' tracks are double. But as the agreement clearly contemplates the construction of single tracks that argument has no force. Their Lordships cannot discover that there is any substantial reason for disturbing the judgment of the Court below on this point.

The next question arises out of the same clause of the agreements. It requires an almost microscopic examination to appreciate, and its effect as measured in money must be but small. As their Lordships understand the case, the measurements made by the plaintiffs, and upheld by both decrees below, include in the mileage to be paid for all curved lines of rail from the point at which they part from a straight line to the point at which they again merge into a straight line. The defendants contend that the mileage for which they are bound to pay is not the length of the various rails, but only the length of that which in the 8th condition of sale is called "the street railway portion of the roadways," and which the plaintiffs are bound to keep in repair for some space on each side of the rails. So far as a curve keeps within this portion of the roadways, it ought not, the defendants say, to be measured for rent.

It seems to their Lordships that the plaintiffs follow the literal construction of section 15 of the agreement, and that section 8 of the conditions does not affect that construction. The miles on which the rent is calculated are miles occupied by the rails. When a pair of rails parts company with a straight line it is rightly measured as occupying so much mileage. The Courts below have taken care that double charges shall not be made for the same rail by measuring it once as the straight line and once again as a curve not yet disengaged from the straight line. The observation already made as to the construction of section 15 also disposes of the question as to what has been called the diamond where rails cross each other at right angles.

The third point relates to a claim for some pavements or roadways laid down by the Toronto Street Railway Company. That was a company which in the year 1861 took from the plaintiffs a grant or lease of the right to make street railways and of the use of roadways or pavements for that purpose; all resumable at the end of 30 years. There were divers stipulations between the parties as to repairs and alterations, and obligations consequent thereon. In case of resumption the value of the Company's property was to be determined by arbitration.

In the year 1877 an Act of the Ontario Legislature (40 Vic. chap. 85) made some provisions on this subject:—

Section 3 provides that "whenever the City shall change the kind of paving (not being macadam, cobble, or building stone) thereafter to be constructed on any street traversed by the railway before such paving is worn out, whereby the same is dispensed with, the City shall make good to the Company the value of the existing paving for the purpose of the Company."

And by section 5 it is enacted—

"That if the corporation of the City should at any time elect to assume the street railway under the provisions of the agreement and by-law in that behalf, the arbitrators appointed to determine the value of the real and personal property of the Company should also estimate as an asset of the Company the value to the

Company of any permanent pavement thereafter constructed or paid for by the Company for the balance of the life of the said pavement."

The plaintiffs did resume in the year 1891 when the prescribed process was followed. By the award of 15th April, 1891, the plaintiffs were ordered to pay to the Street Railway Company the sum of 1,453,788 dollars for the property specified in a schedule. The second item of that schedule is as follows:—

"The interest of the said Company in all pavements and road-beds on the streets of said City (basis of valuation of which is shown in award)."

The materials of the pavements were no part of the basis of valuation. The sum awarded was paid by the plaintiffs to the Street Railway Company.

Thus having become the sole owners of the whole subject-matter, the plaintiffs granted to the defendants by the deed on which they now sue all the railways and property acquired by them from the Street Railway Company under the arbitration and award. The defendants contend that they have not got the whole subject of the grant, because the plaintiffs have not made over to them the materials of the pavements. They make this matter the subject of counterclaim, and they obtained a decree from the first Court, which has been discharged by the Court of Appeal, and which they now seek to restore. The question is, whether the plaintiffs acquired the pavements from the Street Railway Company. If so, they have transferred them to the defendants; otherwise not.

The case appears to their Lordships to be quite free from doubt. The only difficulty consists in the multiplicity of documents. The first Court seems not to have distinguished between the right to use the pavements and the ownership of their materials, and to have considered that a prior judgment of the Ontario Court affirming a right of property in the Street Railway Company settled the point in favor of the defendants. The matter is fully and clearly expounded by Mr. Justice Osler, who delivered the judgment of the Court of Appeal in a way which leaves nothing further to be said. He makes clear these propositions: that the Street Railway Company's property in the pavements was the use of them during the granted term as long as they would last; that when the holding of that Company was terminated by the plaintiffs they were to be paid for the unexhausted value of the use taken away from them and accruing to the plaintiffs; that they were so paid in terms of the award; that this species of property passed to the defendants by the grant of September, 1891; but that the materials of the pavement, as distinguished from the right to use them, remained throughout the property of the plaintiffs, and were not acquired by them from the Street Railway Company nor granted by them to the defendants.

In their Lordships' judgment all the subjects of this appeal have been rightly decided, and they will humbly advise His Majesty to dismiss it. The appellants must pay the costs.

XVII.

"MILEAGE" ACTION—APPEAL FROM REFEREE.

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Toronto Railway Company v. The Corporation of the City of Toronto, from the Court of Appeal for Ontario; delivered the 8th November, 1905.

Present at the Hearing: Lord Macnaghten, Lord Davey, Sir Arthur Wilson. [Delivered by Lord Macnaghten.]

This is an appeal from the Court of Appeal for Ontario. The result of the appeal to that Court was that the appellants, the Toronto Railway Company, were found liable to the Corporation of the City of Toronto for the payment of a mileage rate in respect of 940 feet of street railway track in Queen street or Lake Shore road west of Roncesvalles Avenue. They were, besides, ordered to pay interest on the moneys recovered in the action, but at a lower rate than that fixed by the Court from which the appeal was brought. These two points are the only matters involved in the present appeal. All other questions between the parties have been settled in the course of the action.

The action was brought in 1897 on a contract dated the 1st of September, 1891, under which the Railway Company acquired from the Corporation the exclusive right of working street railways within the City, which at that time extended no further west than Roncesvalles avenue. This privilege or franchise was granted for a term of years in consideration of the payment of certain mileage rates. Disputes, however, soon arose about measurements. In February, 1897, the Corporation brought this action against the Railway Company, claiming a large sum over and above the periodical payments which had been made from time to time. At the original hearing in 1898 it was, among other things, declared that the Company were not liable to pay a mileage rate in respect of the 940 feet of track in dispute. On appeal this part of the order was discharged, and it was referred to the Master in Ordinary to enquire and report by whom the track was constructed, and at what time and what rights of running upon it the Railway Company possessed. The Master, after reviewing the evidence taken before him, found that this portion of the track was constructed by the Railway Company on or about the 30th of June, 1893, as part of their own undertaking, and that their rights of running upon it were governed by the agreement of the 1st of September, 1891, and were subject to the same obligations as were imposed upon the Company with reference to their other tracks. The Master's finding was upheld in the Divisional Court and also in the Court of Appeal. In their Lordships' opinion the conclusion thus arrived at is plainly right. At the date when this piece of the track was laid the portion of Queen street or Lake Shore road on which it was constructed was within the limits of the City, and no person or body other than the Corporation of the City had any jurisdiction or control over it or any right of interfering with its surface. As the Chief Justice observes: "The only lawful way in which the line could then be laid was under authority from the plaintiffs." The position of the Corporation was undisputed, and their consent

was taken for granted and treated as a matter of course. It was not until four years later, after the commencement of the action, that the Railway Company professed to have derived their authority from another source. The evidence offered in support of that suggestion is unsatisfactory and altogether inconclusive.

The question as to interest is not so simple. If the law in Ontario as to the recovery of interest were the same as it is in England, the result of modern authorities ending in the case of *The London, Chatham, and Dover Railway Company* v. *The South-Eastern Railway Company* (1893, A. C. 429) would probably be a bar to the relief claimed by the Corporation. But in one important particular the Ontario Judicature Act, R. S. O. 1897, chap. 51, which now regulates the law as regards interest, differs from Lord Tenterden's Act. Section 113, which is a reproduction of a proviso contained in the Act of Upper Canada, 7 Will. IV. chap. 3, sec. 20, enacts that "interest shall be payable in all cases in which it is now payable by law or in which it has been usual for a jury to allow it." The second branch of that section (as Street J., observes) is so loosely expressed as to leave a great latitude for its application. There is nothing in the Statute defining or even indicating the class of cases intended. But the Court is not left without guidance from competent authority. In *Smart* v. *Niagara and Detroit Rivers Railway Company*, 12 C. P. 404 (1862), Draper, C.J., refers to it as a settled practice "to allow interest on all accounts after the proper time of payment has gone by." In *Michie* v. *Reynolds*, 24 U. C. R. 303 (1865), the same learned Chief Justice observed that it had been the practice for a very long time to leave it to the discretion of the jury to give interest when the payment of a just debt had been withheld. These two cases are cited by Osler, J.A., in *McCullough* v. *Clemow*, 26 O. L. R. 467 (1895), which seems to be the earliest reported case in which the question is discussed. To the same effect is the opinion of Armour, C.J., in *McCullough* v. *Newlove* (27 O. L. R. 627). The result, therefore, seems to be that in all cases where, in the opinion of the Court, the payment of a just debt has been improperly withheld, and it seems to be fair and equitable that the party in default should make compensation by payment of interest, it is incumbent upon the Court to allow interest for such time and at such rate as the Court may think right. Acting on this view the Divisional Court and the Court of Appeal, consisting in all of seven learned Judges, have given interest in the present case, though not without some hesitation on the part of Britton, J., in the Divisional Court, and some hesitation on the part of Osler, J.A., in the Court of Appeal.

Their Lordships have come to the conclusion that the judgment under appeal ought not to be disturbed. The question is one in which the opinion of those familiar with the administration of justice in the Province is entitled to the greatest weight. Their Lordships are not satisfied that the decision of the Court of Appeal, which evidently has been most carefully considered, is in any respect erroneous.

Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed.

The appellants will bear the cost of the appeal.

XVIII.

"OMNIBUS" ACTION.

Judgment of Anglin, J. — 10th October, 1904.

CITY OF TORONTO v. TORONTO RAILWAY CO.

ROBINSON, K.C., and FULLERTON, K.C., *For plaintiffs.*

W. CASSELS, K.C., and BICKNELL, K.C., *For defendants.*

In an action pending in this Court issues are raised which involve the determination of the respective rights of the plaintiffs and defendants as to a number of matters affecting the operation of the Toronto Street Railway. The solution of many of the questions as to which the parties differ depends upon the true construction of several provisions of the agreement under which the defendants acquired this valuable property, This agreement, including certain incorporated documents, was ratified and confirmed by Act of the Legislature of this Province, 55 Vic. chap. 99, and is to be found printed as a schedule to that Statute. To dispose as far as possible of such questions, counsel for both parties agreed to submit to the Court a special case. This case, presented and argued before me in Weekly Court on the 10th October, 1904, is in the following terms:—

The parties desire before proceeding to take further evidence in this case, to obtain the opinion of the Court upon certain questions of law arising on the construction of the agreement on which the action is brought.

These questions are:—

Is the City or the Railway Company, and which of them, on the proper construction of the agreement, entitled to determine, decide upon and direct:—

1. What new lines shall be established and laid down and tracks and service extended thereon by the Company, whether on streets in the City as existing at the date of the agreement or as afterwards extended?

2. What time-tables or routes shall be adopted and observed by the Company?

3. Whether if so determined by the City Engineer, with the approval of the City Council, cars which start before midnight must finish the route on which they have so started, though it may require them to run after midnight.

4. At what time the use of open cars shall be discontinued in the autumn and resumed in the spring, and when the cars should be provided with heating apparatus and heated

5. In the event of the decision of the Court being in favor of the City on any of the above questions, is the City entitled to a decree for specific performance as to the matter so decided or in any and which of them?

6. Is the privilege to the City to grant to another person or company for failure of the Company to establish and lay down new lines and to open same for traffic or to extend the tracks and services upon any street or streets as provided by the agreement, the only remedy the City can claim?

The parties submit to the Court to say what answer or answers should be given according to law to each of the above questions, each party to have the right to appeal.

In approaching the consideration of the agreement and incorporated conditions, I fully accept the proposition with which Mr. Cassels opened his argument, viz., that to manage the defendant Company and its undertaking is the right and the duty of its directors. But inasmuch as this Company exists for the purpose of operating the Toronto Street Railway under a public franchise, it must be self-evident that in regard to matters within their scope the terms and conditions upon which the franchise itself is held must govern the exercise of the rights which it confers. To these terms and conditions in such matters the management and control of the directorate of the defendant Company must conform. To that extent their independence of action is restricted—their right of control is qualified.

The agreement under consideration is in substance the grant for a lengthened term of valuable rights upon the streets of the City of Toronto; the conditions incorporated in it are the terms upon which the defendants sought and acquired these rights. These documents must be taken to have been intended adequately to provide for the operation of a street railway in a large and rapidly growing City, and to ensure a service suited to its wants and satisfactory to citizens of reasonable expectations. Consistently with these requirements, it must be assumed that both parties contemplated an arrangement reasonably advantageous to the defendants as a commercial corporation. The agreement and conditions must be read in the light of these facts, and in a broad and liberal spirit, the particular provisions being constructed so as best to effectuate these general purposes where the language employed fairly permits of such construction.

That both parties had in view a single system of surface street railways for the entire City of Toronto for a period of thirty years is abundantly plain. The general scope and character of the agreement and conditions make this obvious. When this agreement was entered into it was common knowledge that Toronto was growing rapidly. It is not possible to suppose that either party contemplated a separate street railway system for suburban districts then outlying which should come within the City limits. The Company, desirous of preserving its monopoly against competition—in new territory as well as old; the City anxious to secure the advantage of a single system; both, dealing not with the conditions of the

moment, but with privileges to be enjoyed and services to be rendered for a period of thirty years, must be taken to have intended by the words, "in the City of Toronto," whatever that phrase might describe at any time during such thirty years period.

I have no doubt that the provisions of this agreement, onerous as well as advantageous, were meant to apply and do apply to extensions of the City during the term of the agreement.

Upon examining the provisions of the conditions with regard to the matters covered by the first and the second questions of the special case, a striking contrast is apparent between clause 14, which, in regard to new lines, not only requires the approval of the City Engineer's *recommendation* by the City Council, but also that the period within which such recommendation should be carried out by the Company shall "be fixed by by-law to be passed by a vote of two-thirds of all the members of the Council," and clauses 26, 27 and 28, under which the City Engineer is to *determine* certain other matters, subject only to "approval by the City Council," presumably by the vote of a majority of the members present, not being fewer than a quorum. Why this difference? Why such provision at all if the Railway Company is entitled itself to decide what shall be done in respect to matters covered by these clauses?

The City Engineer appears to hold in regard to the parties to this agreement a position not unlike that held by the architect between the owner and the contractor under familiar provisions of building contracts. For the protection of the Company the agreement makes the recommendation or the determination of the City Engineer a pre-requisite to anything being demanded of the Company. In the case of new lines and extensions, the defendants are further protected by the provision that a by-law, passed by a vote of two-thirds of all the members of the Council, shall fix the period within which the Company will be required to carry out such recommendation.

Under clause 14, which governs the matters covered by the first question, it is the City Council approving, and, by by-law passed by a vote of two-thirds of its members, fixing the time for compliance by the Company with a recommendation of the City Engineer, which may "determine, decide upon and direct what new lines shall be established and laid down and tracks and services extended thereon by the Company; whether on streets in the City as existing at the date of the agreement or as afterwards extended."

Question number two relates to time tables and routes. It is impossible to answer this question categorically. In respect to matters covered by clauses 26, 27 and 28 of the conditions, neither the City nor the Railway Company is entitled to "determine, decide upon and direct." It is the City Engineer who has this right and duty—but his determination, before the Company can be required to recognize or act upon it, must be approved by the City Council.

Reading clauses 26, 27 and 28 of the conditions together, and having regard to the tenor of the whole agreement, I think the conclusion is inevitable that both time-tables and routes are within their purview. The City Engineer cannot satisfactorily or efficiently exercise his right to determine speed, service and intervals between cars unless he also possesses power to decide upon and fix routes. His right to determine with the approval of the City Council the "service" necessary upon all lines is unrestricted and is quite wide enough to include the power to specify the routes to be established and maintained. Given the routes and condition No. 27, fixing the hours of starting and finishing the daily runs, the making of time-tables is nothing more than a convenient method of exercising the right to determine speed and intervals.

It is perhaps unnecessary to add that these powers should not be used in an arbitrary or unreasonable manner. Some sound discretion as to what is proper and reasonable may naturally be expected of a gentleman whose qualifications fit him to be City Engineer of a city such as Toronto. Upon the fair exercise of that discretion, those who were in charge of the interests of the defendants when this agreement was framed seem to have been fully prepared to rely.

The third question has caused me some difficulty. Provision is already made, by a judgment of this Court referred to in argument and put in for my guidance, for transfers from day to night cars and vice versa. Fares on night cars are double the ordinary maximum single rate fares (clause 30). By section 17 of the Statute it is enacted that "The fare of every passenger shall be due and payable on entering the car or other conveyance of the Company." Clause 27 of the conditions provides that "Day cars are to commence running at 5.30 a.m. and to run until 12 o'clock midnight." There is nothing to prevent the City Engineer under clause 28, requiring "night cars" to be provided in such numbers and running upon such routes and at such intervals as may be requisite to carry to their destination all passengers who may be unable to finish their journeys in day cars. He may so arrange his time-tables that all day cars will "run in" from transfer points. I can find nothing in the agreement itself, or in the working out of its provisions as to day and night cars which would enable me to say that it entitles the City to require the Company to run after midnight any car which, having started as a day car cannot in due course finish its route by that hour. This is a matter in respect to which, by the exercise of a little good sense, an arrangement satisfactory to both parties could readily be made. As the fare is by the Statute payable on entering the car, and the Company is bound to transfer passengers from day to night cars, an arrangement that all cars on the road at midnight should *eo instanti* cease to be day cars and becoming night cars should as such, continue their routes, and that all passengers entering such cars after midnight should pay ten cent fares, would probably meet the requirements of both parties, and should present no greater difficulty in operation than the practice prevailing in regard to limited tickets. The third question as put in the special case, however, must be answered as contended for by counsel for the defendants.

If required to say by what test or in what manner the proper authority is to determine when the use of open cars shall be discontinued in the fall and resumed in the spring, and when the cars should be provided with heating apparatus and heated, I might find it difficult to answer. These, however, are in my opinion matters of "service" within the purview of condition No. 26, and the City Engineer is authorized thereby to determine them with the approval of the City Council.

With regard to the fifth question, the learned counsel for the plaintiffs virtually conceded that unless I felt at liberty, in view of the decision of the Court of Appeal in England in Wolverhampton v. Emmons (1901) 1 K. B. 515, to decline to follow the decision of our own Court of Appeal in Kingston v. Kingston Electric Railway Co., 25 A. R. 462, this question must be answered in the negative. That this latter decision is in point could not, I think, be successfully controverted. But for a recent enactment of the Ontario Legislature I might, upon the authority of Trimble v. Hill, 5 A. C. 342, 344, if I thought this case within the principles enunciated in Wolverhampton v. Emmons, have followed that decision. But in my opinion section 81 of the Ontario Judicature Act (R. S. O. 1897, chap. 51), obliges me to follow the decision of the Ontario Court of Appeal, notwithstanding any later expression of opinion in any English Court except the Judicial Committee of the Privy Council.

Any expression of my own views as to whether Wolverhampton v. Emmons would in itself be authority for a decree of specific performance in regard to any of the matters covered by the present case would be purely academic—and for that reason should be withheld. Following Kingston v. Kingston Electric Railway Co., as I deem myself bound to do, I answer the fifth question in the negative.

To answer the sixth question affirmatively would be in effect to declare that having convenanted, promised and agreed "to establish and lay down new lines and to extend the tracks and street car service as may be from time to time recommended by the City Engineer, etc." (condition No. 14, and clause 12 of the agreement), the Company nevertheless may at any time elect, in lieu of performing their covenant, to forfeit their exclusive rights to the extent provided by condition No. 17. A not improbable consequence would be that the Company would from time to time refuse to lay down tracks upon streets in sparsely populated outlying districts. Upon these streets, far distant one from another, no person or Company could be found willing to undertake the operation of isolated lines of street railway. No rival system could be established—and, if it could, all the advantages of the single system throughout the City contemplated by the arrangement between the City and The Toronto Railway Company would be lost to the former. It is impossible to believe that the parties intended that the Company should enjoy an option so entirely inconsistent with the manifest object and general tenor of the bargain which they made. Nor do I think any rule of construction requires me to hold that the City relinquished for such an illusory and shadowy alternative right whatever substantial redress it would otherwise be entitled to

claim for breaches of obligations which may be imposed upon the company under the provisions of condition No. 14. To question number six I therefore make answer that "the privilege to the City to grant to another person or company for failure of the Company to establish and lay down new lines and to open same for traffic or to extend the tracks and service upon any street or streets as provided by the agreement, is not the only remedy the City can claim.

The special case is silent as to costs. To prevent future difficulty however, so far as Con. Rule No. 1130 enables me to do so, I direct that the costs of and incidental to this special case, be costs in the cause in the pending action in which this case has been stated.

TORONTO	ROBINSON, K.C., FULLERTON, K.C.,
v.	*For plaintiffs.*
TORONTO RAILWAY	W. CASSELS, K.C., BICKNELL, K.C.,
COMPANY.	*For defendants.*

ANGLIN, J., DECEMBER 3RD, 1901.

After I had delivered judgment upon the "special case" stated in this action, my attention was directed by Mr. Fullerton of counsel for the plaintiffs, to certain statutory provisions in the nature of private legislation which it was suggested might have a bearing upon the question presented, as to the right of the plaintiffs to a decree for specific performance. This legislation, said to have been procured on behalf of the municipality to overcome the difficulty presented by the decision of the Court of Appeal in the City of Kingston v. Kingston Electric Railway Company (1898), 25 A. R. 462, had not been alluded to in the argument before me. Under these circumstances I thought it advisable to stay the issue of formal judgment, to withdraw my opinion upon and answer to the fifth question submitted and to direct that the special case should again be placed upon the Weekly Court list in order that I should have the advantage of hearing counsel upon the scope and effect of these special statutory provisions, 63 Vic. chap. 102, sections 1 and 5.

Counsel for the plaintiffs state that their omission to refer to these provisions was not intentional. Mr. Robinson added that in his opinion they cannot affect the judgment upon the fifth question in the special case. He points out that, before the plaintiffs can claim a decree for specific performance by virtue of this special legislation, they must give evidence that the conditions exist which impose obligations upon the defendants under their agreement with the plaintiffs, and of

the nature and extent of the breaches of such obligations, after which, in the exercise of its discretion, the Court is to determine what things, if done or forborne, would constitute a substantial compliance with such obligations and these things when so determined, it shall order to be done or forborne.

Counsel for both parties state that the fifth question in the special case was propounded for the purposes of obtaining an adjudication upon the applicability of the decision in the Kingston case, and, should it be held to be in point, a review of that decision.

Had there been no such legislation as is contained in the statute, 63 Vic. ch. 102, the question, as framed, would necessarily have involved the determination which the parties avow it to be their desire to obtain. But it must be obvious that, if the plaintiffs should make out a case, as outlined by Mr. Robinson, entitling them to the benefit of this special legislation, it will be wholly necessary to consider the applicability or the authority of the decision in Kingston v. Kingston Electric Railway Company, 25 A. R. 462. Upon a special case stated in an action, only such questions of law can properly be raised as must sooner or later arise in the action. The Republic of Bolivia v. The National Bolivian Navigation Company (1876), 24 W. R. 361.

To answer the fifth question so as to meet the real purpose of the parties in presenting it, I should be obliged to assume that the plaintiffs will fail to establish facts entitling them to invoke the special statutory provisions of 63 Vic. chap. 102. On the other hand, taking these provisions into account, at best only a hypothetical answer can be made to this question. It will be time enough to determine whether the remedy of specific performance is open to the plaintiffs under the statute when they have established a case to which the statute applies; time enough to consider their right to this relief apart from the statute, when it becomes clear that the statute has no application. At present the question propounded cannot be answered without disregarding the well established practice of this Court to decline to answer contingently questions involving problems which, in the ultimate working out of the action, may not present themselves for solution.

The Court is not bound to answer every question which parties litigent may see fit to put: Viscount Barrington v. Liddell, 2 DeG. M. & G. 480, 506. The undoubted right of the Court to decline to express "speculative opinions on hypothetical questions," or hypothetical opinions upon questions, a categorical answer to which can only be given when certain facts not admitted have been established by evidence, finds in the fifth question of the present special case a subject which compels its exercise.

For these reasons I feel obliged to refrain from answering this question.

XIX.

JUDGMENT OF JUDGE WINCHESTER IN ACTION TO RECOVER PENALTIES FOR OPERATING CARS ON AVENUE ROAD WITHOUT FENDERS.

IN THE COUNTY COURT OF THE COUNTY OF YORK.

[*15th April, 1905.*]

TORONTO
v.
TORONTO RAILWAY COMPANY.

An action brought by the Corporation of the City of Toronto to recover from the defendants the sum of $200 under sub-section 6 of section 18 of the Street Railway Act, as amended by 1 Edward VII., chapter 25, being the penalty for twenty days violation of the said Statute, that is, from the 28th January to the 16th February, 1905, inclusive.

MR. J. S. FULLERTON, K.C., and MR. WILLIAM JOHNSTON, for the plaintiffs.

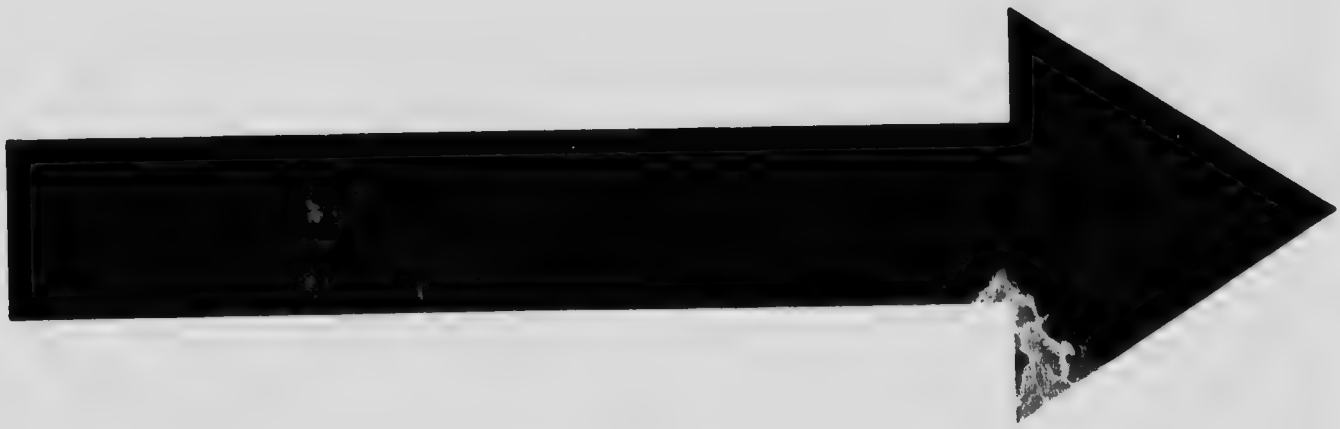
MR. JAMES W. BAIN, for the defendants.

The plaintiffs make the following allegations in their Statement of Claim:

"2. The defendants operate a surface street railway upon certain streets in the City of Toronto under an agreement set forth as a schedule to 55 Victoria, chap. 99, Statutes of Ontario, and have laid down upon Avenue Road a public highway in the City of Toronto, a double line of railway tracks and operate cars thereon by means of electricity.

"3. The Ontario Statute 1 Edward VII. chap. 25, enacts as follows:—'1. Sub-section 4 of section 18 of the Street Railway Act as enacted by section 1 of the Act passed in the 63rd year of the reign of Her late Majesty Queen Victoria, chapter 31, is repealed and the following substituted therefor.' '(4) The Company when operating any portion of its line by means of electricity shall from time to time adopt and use in the front of such motor car a fender which shall be of a design approved of by the Lieutenant-Governor in Council from time to time upon a report by the Engineer of the Department of Public Works for Ontario as suitable for use by the Company, having regard to the efficiency of such fender for life-saving purposes and to the location of the Company's line and the speed at which the Company's cars may run.

"2. Section 18 of the Street Railway Act is amended by adding thereto the following sub-section:—'(6) The Company shall pay to the Corporation of



the Municipality in which such road is operated the sum of $10 for each day in which any motor car is operated, within such municipality, without having such a fender thereon, except in cases of accident or unavoidable necessity; such sum or sums to be recovered from such Company in a civil action.'

"4. The Ontario Statute 2 Edward VII. chap. 26, enacts as follows:—'1. Sub-section 4, section 18 of the Street Railway Act, as enacted by section 1 of the Act passed in the first year of the reign of His Majesty King Edward VII. chap. 25, and sub-section 6 of section 18 of the Act passed in the first year of the reign of His Majesty King Edward VII. chapter 25, shall apply to every Street Railway Company now or hereafter established or incorporated under any special Act of the Legislature of the Province of Ontario, and shall be incorporated with and deemed to be parts of each of such special Acts.

The defendants by their Statement of Defence admit the allegations above set forth, and in consequence no evidence in support of same was necessary. The remaining paragraph of the plaintiffs' Statement of Claim alleged that the defendants upon each of the days from the 28th January to the 16th February, 1905, operated motor cars upon Avenue Road in the City from Dupont Street northward to the end of the line on Avenue Road by means of electricity without having a fender in front of each such car and the plaintiffs claim $200 penalty under the sub-section 6 of section 18 of the Street Railway Act as amended, being the sum of $10 per day for each of the said twenty days from the 28th January to the 16th day of February inclusive. To this allegation the defendants state that the cars operated by the defendants on Avenue Road are equipped with a fender approved by the Lieutenant-Governor-in-Council as required by the Statute in that behalf, that the cars running northwards on Avenue Road are also used south of Dupont Street on Avenue Road forming a route known as the Avenue Road route, and that each of the said cars is equipped with a fender placed in the front of said car being that part of said car in which the controller and other operating equipment of the said car is placed, and that north of Dupont Street on Avenue Road there is only one line of railway track in use, and that it is necessary in running said cars northward to back the same up Avenue Road from Dupont Street northward, but the fender still remains upon the front of said car as aforesaid, and the defendants claim as a matter of law that they have complied with the said Statute in having such fender in the front of such car and that there is nothing in the said Statute which prevents a car having a fender in front thereof as aforesaid being moved backwards as necessity requires.

The evidence in support of the plaintiffs' claim shews that during the twenty days above mentioned the defendants operated certain motor cars, as a part of their system, on Avenue Road north of Dupont Street in the City of Toronto by running these cars backwards a distance of 1,280 feet—one witness stated the distance to be half a mile, while another referred to it as being a quarter of a mile—the correct distance is, I believe, 1,280 feet—and that in this distance there were three crossings or streets at which passengers were taken on

or let off the cars; that on these cars there was no fender on that part of the car which was in front while backing up. Evidence for the defence showed that the fender was on the front end of the car all the time and that the Statute was complied with by its being there even while backing northwards. A copy of an order of the Railway Commissioners of Canada made in March, 1904, was put in by the defendants in which the defendants were prevented from using the easterly track in crossing the C. P. R. tracks.

On the evidence Counsel for defendants contended that the provisions of the Statute were complied with by the fender being on the front end of the car and that the order of the Railway Commissioners caused an "unavoidable necessity" to use the cars in the manner in which they were being operated.

As pointed out by me during the progress of the trial it is not a question of what *end* of the motor car the fender is attached, but the question is whether a fender is used in the front of each motor car suitable for use by the Company having regard to the efficiency of such fender for life saving purposes. To claim that a fender drawn after a motor car instead of being used in front of a motor car is suitable for use by the Company, having regard to the efficiency of such fender for life saving purposes, is absurd. If the fender is to be efficient it must be used in the front of the moving car and not behind it whether it is on the rear end of the car backing up or the front end of the car when going forward. The intention of the Legislature as shewn by the Statute was to have a fender not only suitable in its form, etc., but also so used as to be efficient for life saving purposes.

In the Standard and other dictionaries the word "front" is stated to mean "that which moves in advance or which is first encountered," and that "position directly before the face of a person or foremost part of a thing." The meaning of the words "in front" used with reference to the assessment of a building is considered in the Justices of Bedfordshire Cases, 7 Exchange 658, at page 665, 2666, where it was decided that it was proper to assess the building on the sides and back parts which abutted on streets under the words "in front."

The Company in backing up the motor cars on Avenue Road use the rear part of the car as they do the front when going forward, in so far as the rear part is then the most prominent or conspicuous part to any one facing it or to anyone whom the car may run into. In placing a fender in the front end of the car and then reversing the car so as to bring the rear end in the front without a fender on, it does not, in my opinion, comply with the requirements of the Statute, and is of no benefit for life saving purposes. This was shown in the late case against the defendants in the General Sessions in connection with the death of Mrs. Ward on Avenue Road, and as shown by the judgment of the Court of Appeal on an appeal from the verdict in such case. That a fender can be placed and operated on the rear end of the car as well as on the front end of the car is clear from the evidence of Mr. McCallum, the City Architect, formerly the Engineer in the Department

of Public Works for Ontario, and who reported on the fenders approved by the Lieutenant-Governor-in-Council as provided by the Statute. He stated that he could place a suitable fender on both ends, and that he had seen fenders on both ends of motor cars operating in other cities. The defendants' contention that they are prevented from using the easterly track on Avenue Road is, as already stated, in connection with crossing the C. P. R. tracks, and does not, in my opinion, relieve the defendants from using a fender in the front of the car while it is moving backward.

I am therefore of opinion that the defendants have not complied with the requirements of the Statute and have shewn no sufficient excuse for not doing so, and that the plaintiffs are entitled to recover from them the amount claimed herein. As to this amount being a debt, see the judgment of Mr. Justice Osler, Rex v. Toronto Railway Company, delivered on 12th April, 1905.

Judgment will be entered in favor of the plaintiffs for $200 with costs of the action.

(Affirmed by Divisional Court, November 4th, 1905.)

NOTE.—*At the General Sessions for the County of York on September 30th, 1904, the Toronto Railway Company were tried upon an indictment and found guilty of committing a nuisance on account of the operation of cars on Avenue Road, north of Dupont Street, without fenders, and were fined $2,500.*

On appeal to the Court of Appeal the conviction was sustained. (10 O. L. R. 26.)

XX.

REPORT OF JUDGE SNIDER IN "PENALTIES" ACTION.

[*1st August, 1905.*]

IN THE HIGH COURT OF JUSTICE.

Between

THE CORPORATION OF THE CITY OF TORONTO, *Plaintiffs.*

and

THE TORONTO RAILWAY COMPANY, *Defendants.*

In pursuance of the order made herein by the Honorable Mr. Justice Street, bearing date the 3rd day of May, 1905, referring this consolidated action to me for trial and report under section 29 of the Arbitration Act, I have been attended by Counsel for the respective parties, and having heard and considered the evidence adduced and papers and exhibits put in evidence and the arguments of Counsel, I find as follows, that is to say:

1. Counsel for the plaintiffs contends that under conditions 26, 27 and 28 of the agreement and conditions referred to in the 3rd paragraph of the Statement of Claim herein, the City Engineer has the power and duty to make a schedule or time-table of both day and night service of cars to be operated on the defendants' routes in the City of Toronto, determining thereby the speed and service of cars necessary on each main line, part of same or branch, and also to determine the streets on which routes are to be run, to which, if approved by the City Council, the defendants are bound to conform, and that in case they neglect or refuse to reasonably comply with such schedule or time-table the plaintiffs are entitled under section 3 of chapter 93 of 4 Edward VII. O. S., to recover $100 for each day of such non-compliance.

The defendants, among other things, contend that the said section 3 of said chapter 93, does not refer to a service of cars reasonably complying with the City Engineer's time-table or schedule determining as aforesaid, which may in itself be unreasonable, but refers to neglect or refusal to reasonably comply with the purpose and provisions of the said agreement and conditions by not using proper cars, or at most in not giving a service of cars reasonably sufficient for the accommodation of the passenger traffic, and having regard also to the service of cars on similar lines in other cities. Little evidence of the reasonableness in either view of the service of cars provided by defendants has been given before me by either party, each contending that the burden of proof is on the other.

2. I find and report that in my opinion under conditions 26, 27 and 28 of the said agreement referred to in the 3rd paragraph of the statement of claim herein, the City Engineer has the power and duty from time to time to make up a schedule or time-table determining the speed and service of cars and the intervals between cars according to which, if approved by the City Council, the defendants are bound to run their cars both day service and night service, and that section 3 of chapter 93 of 4 Edward VII. O. S., intends and requires a service of cars reasonably complying with such schedule or time-table.

3. I find and report that the City Engineer did on the 31st day of March, 1904, acting under said agreement and conditions, make a schedule or time-table whereby he determined the speed and service and intervals between cars necessary throughout the defendants' railway system, and the routes to be followed, and he therein also directed the routes and hours and intervals on which he deemed it necessary that night cars should be run, and this time-table so prepared was submitted by him to the City Council with a recommendation for its approval, and it was approved of by the City Council by resolution duly passed on the eleventh day of April, 1904, and a copy thereof certified under the plaintiffs' corporate seal was forthwith served on the defendants, and I further find and report that such time-table was workable, although in my opinion the City Engineer had no power to require cars to start at each end of any route at 5.30 a.m., the defendants under condition 27 being required only to start one car running on each route at 5.30 a.m. to be followed at required intervals by others.

4. I find and report that in my opinion the approval of the City Council under this special Act was legally expressed by resolution and that a by-law for the purpose was not necessary.

5. I find and report that the speed and service of cars required by the said City Engineer's time-table divides the time between 5.30 a.m. and 12 o'clock midnight into ordinary hours and busy hours, the busy hours being about between 6 and 9.30 o'clock a.m., and 5 to 6.30 o'clock p.m., and 7 to 8 o'clock p.m., varying slightly on different routes, and further that such speed and service of cars is the same for each day, leaving the defendants to make such extra provision as they might see fit for holidays, circus days, the Exhibition, etc.

6. I find and report that the speed and service of cars actually supplied by the defendants on all their routes in the City of Toronto during the ordinary hours of the day service on all of the 181 days mentioned in the Statement of Claim did reasonably comply with the said time-table of the City Engineer for such hours, and therefore with the said agreement and condition in this respect, excepting that on some of the routes cars did not begin to run until 6 o'clock a.m.

7. I find and report that the defendants did not comply with the said time-table of the City Engineer as to speed and service of cars and intervals between cars during the busy hours of the day service on any of the said 181 days

on any of their routes; on the contrary the defendants entirely disregarded the said time-table in this respect. The said time-table required in the aggregate on the defendants' 16 routes between the hours of 6 and 9.30 o'clock a.m., each day, 1,131 trips one way, whereas the number of such trips actually run by the defendants was 683, with slight variation on some days, making a shortage of 446 such trips daily during those hours. The said time-table required in the aggregate on the said sixteen routes during the busy time between 5 and 6.30 o'clock p.m. each day 632 trips one way, whereas the number of such trips actually run by the defendants was 392, with slight variation on some days, making a shortage of 240 trips daily during the afternoon busy time. Between 7 and 8 o'clock there was an average daily shortage of 21 trips. The detailed daily statements and observations from which I have taken the foregoing average are contained in exhibit number 7, being a volume of observations taken throughout the day on each of the 181 days mentioned in the statement of claim, which volume was by agreement put in evidence subject to but not varied by cross-examination and which I find to be correct.

8. I find and report that the said time-table of the City Engineer required night cars to be run by the defendants at the hours and intervals therein set down on the following routes, that is to say,—King Street West, Avenue Road, Winchester Street, Broadview Avenue, Church Street and Queen Street East, but the defendants did not run any night cars on any of the dates mentioned in the statement of claim on any of the said routes.

9. I find and report that the said City Engineer required the defendants to run the Dundas Street route during the said 181 days in part from Yonge Street East on Queen Street to Church Street, and down Church Street to Front Street, which they did not do on any of the said 181 days, but ran said route down Yonge Street from Queen Street to Front Street. The City Engineer directed the defendants to run the Queen Street route during the said 181 days along Queen Street from the West City limits to the East City limit, and return over the same street, which they did not do on any of the said 181 days, but ran said route from Queen Street down Yonge Street to Front Street, east to Church Street and north to Queen Street, and then west to the starting point at the West City limit. The City Engineer directed one route to be called the King Street and Broadview Avenue route to run from Roncesvalles Avenue to Danforth Avenue via King Street and Broadview Avenue during the said 181 days, which the defendants did not do on any of the said days, but made two routes of this, taking different streets, crossing King Street at Yonge Street, but not running along King Street. The City Engineer directed the defendants to run their Winchester Street route around Union Station during said 181 days, which they did not do on any of the said days, but turned north from Front Street up York Street, thus leaving out the Union Station on this Winchester Street route. The City Engineer directed the defendants to run their Bloor and McCaul Street route during the said 181 days up Church Street, which they did not do on any of the said days, but instead thereof ran the Bloor and McCaul route up Yonge Street.

10. I find and report that on the 181 days in question the defendants were able, that is had the equipment, to comply much more nearly with the said time-table of the City Engineer in speed and service of cars and intervals between cars for the busy hours of the day service than they did, and they were able to comply fully with the required night service.

11. I find and report that the same shortages in speed and service of cars and intervals between cars occurred on holidays and busy days on many of the routes as on ordinary days, while on some routes on such days the more frequent service of cars was given than that required for busy hours on those routes by the time-table of the City Engineer.

12. I therefore find and report that the defendants on each and every of the 181 days in the statement of claim mentioned, neglected and refused to reasonably comply with the provisions of said agreement and conditions, and that such neglect and refusal was not due to any of the causes excepted from the operation of said section 3 of chapter 93 of 4 Edward VII. O. S., and that the plaintiffs are entitled to recover from the defendants in this action $18,100, being $100 for each of the 181 days particularly mentioned in the statement of claim.

13. In case I am in error in holding that the breaches of the service as determined by the City Engineer's said time-table in manner aforesaid, are covered by section 3 of chapter 93 of 4 Edward VII. O. S., and the contention of the defendants' Counsel as to the application and meaning of said section 3 of chapter 93 is found to be correct, I further find and report on the evidence before me that the defendants did not neglect or refuse on any of the days and routes in the statement of claim set out to give a service of cars reasonably sufficient for the accommodation of the passengers' traffic wishing to use it, and that the only evidence tending to show inadequate service was of a certain amount of congestion and overcrowding in the central part of the City for about twenty minutes after six o'clock in the afternoon caused by the rush of people then wishing to return to their homes as quickly as possible, and all at the same time. To provide at this point all the service of cars which would be necessary to completely overcome such overcrowding during the twenty minutes aforesaid, appears from the evidence to be a difficult matter, and the defendants appear to have made during said days and since, earnest efforts in their own way to reasonably provide therefor.

All of which I humbly report and certify to this Honourable Court.

Dated at Toronto this 1st day of August, A. D. 1905.

(Signed) COLIN G. SNIDER.

Referee.

XXI.

"OMNIBUS" ACTION, JUDGMENT OF COURT OF APPEAL.

[*November 13th, 1905.*]

CITY OF TORONTO v. TORONTO RAILWAY COMPANY.

Street Railways—Agreement with Municipal Corporation—Construction—Operation of Railway—Right of Municipality to Direct—Service—New Lines—Extension of Municipal Boundaries—Time Tables and Routes—City Engineer—Night Cars—Open Cars—Heating Cars—Specific Performance—Special Case—Hypothetical Case—Refusal to Answer—Appeal.

Appeal by defendants and cross-appeal by plaintiffs from judgment of ANGLIN, J., 9 O. L. R. 333, 4 O. W. R. 330, 446, on a special case agreed on between the parties in the course of the action.

W. Cassels, K.C., W. Laidlaw, K.C., and J. Bicknell, K.C., for defendants.

C. Robinson, K.C., and J. S. Fullerton, K.C., for plaintiffs.

The judgment of the Court (MOSS, C.J.O., OSLER, GARROW, and MACLAREN, JJ.A.), was delivered by

OSLER, J.A.:— . . . The action was brought upon the agreement set forth as a schedule to 55 Vict. ch. 99 (O.), between plaintiffs and defendants, relating to the purchase of the street railway and properties and the street railway privileges of plaintiffs, and defendants' rights, duties, and obligations in the working and management of the railway and privileges so acquired. Plaintiffs claimed a declaration as to the rights of the parties under the agreement in respect of: (1) the obligation of defendants under sec. 14 of the conditions incorporated in the agreement to establish new lines and to extend their tracks and street car service; (2) their obligation under the 36th clause of the conditions as to the period of the year during which open cars might be run and during which closed cars should be heated; and under clause 25 the routes, hours, and intervals during and at which night cars should be run, all of which matters, as plaintiffs contended, were subject to the regulations and directions which had been made by their engineer and approved by themselves, but which defendants had neglected and refused to conform to; (3) the obligation of defendants under clauses 26 and 27, to conform to the directions of the engineer, approved by themselves, as to the routes, hours of service, number of cars to be operated, and times of departing of cars and intervals between cars.

Plaintiffs also asked: (1) that defendants might be ordered to specifically perform the agreement "in the said several matters," that is to say: (a) to lay down the lines of street railway which plaintiffs had required them to lay down and establish, and to operate street cars thereon; (b) to discontinue the use of open cars and to put on closed cars within the dates specified, as plaintiffs had required them to do; (c) to run night cars on such routes and at such intervals as might be deemed necessary by the city engineer and approved by the council; (2) an injunction to restrain defendants from operating the railway in the city without complying with the above, and to restrain them from operating their cars except in accordance with the service and timetable determined by the engineer and approved by the council, as set forth and alleged in the statement of claim: (3) damages for the breach and non-performance of their agreement.

Defendants contended that they were not bound to lay down new lines or extensions within territory taken into the city limits after the date of their agreement—that the only consequence of their default in laying down new lines and making any extensions required was that the plaintiffs might themselves construct them, or might confer the franchise in respect thereof upon other persons or corporations; and that, upon the true construction of the agreement, the regulations and directions which were sought to be imposed upon defendants with regard to the running of their cars and as to open and closed cars and the heating of cars, were in respect of matters which the defendants were at liberty to decide for themselves, and were not within the powers of plaintiffs or their engineer to make or to impose upon them.

After the pleadings were closed the parties agreed upon a special case for the opinion of the Court in the following terms: "The parties desire before proceeding to take further evidence in this case to obtain the opinion of the Court upon certain questions of law arising on the construction of the agreement on which the action is brought. These questions are:

"Is the city or the railway company, and which of them, on the proper construction of the agreement, entitled to determine, decide upon, and direct:—

"1. What new lines shall be established and laid down and tracks and service extended thereon by the company, whether on streets in the city as existing at the date of the agreement, or as afterwards extended?

"2. What time tables and routes shall be adopted and observed by the company.

"3. Whether, if so determined by the city engineer, with the approval of the city council, cars which start before midnight must finish the route on which they have so started, though it may require them to run after midnight?

"4. At what time the use of open cars shall be discontinued in the autumn and resumed in the spring, and when the cars shall be provided with heating apparatus and heated.

"5. In the event of the decision of the Court being in favour of the city on any of the above questions, is the city entitled to a decree for specific performance as to the matter so decided or in any and which of them?

"6. Is the privilege to the city to grant to another person or company, for failure of the company to establish and lay down new lines and to open same for traffic or to extend the tracks and services upon any street or streets as provided by the agreement, the only remedy the city can claim?"

The Judge before whom the special case was heard in the Court below answered the 1st, 2nd, 4th, and 6th questions in favour of plaintiffs, the 3rd in favour of defendants, and as to the 5th question held that it was not ripe for decision. This question, therefore, remains not answered.

With regard to the 1st question it was conceded on the argument . . . . that it related to extensions of lines and construction of new lines within the territorial extensions of the city since September, 1891, and that it was practically disposed of by the judgment of this Court in the recent case between the same parties reported in 5 O. W. R. 130, and the point was not argued before us, the parties being left free to raise it before any other appellate tribunal if they shall be so advised. . . . Our judgment appears to have been affirmed by the Judicial Committee of the Privy Council. The form of the answer should, however, be varied so as to read as follows: "It is for the city and not for the railway company to determine, decide upon, and direct, and in the manner prescribed by clause 14 of the conditions of the agreement of 1st September, 1891, what new lines shall be established and laid down and tracks and services extended thereon by the company, whether on streets in the city as existing at the date of the agreement or as afterwards extended."

The 6th question . . . relates to the matters referred to in and disposed of by the answer to the 1st. The conditions which apply to this question are the 14th, the 11th, and the 17th. Condition 14 provides that the purchaser will be required to establish and lay down new lines and to extend the tracks and street car service on such streets as may be from time to time recommended by the city engineer and approved by the city council, within such period as may be fixed by by-law to be passed in the prescribed manner, and all such extensions and new lines shall be regulated by the same terms and conditions as relate to the existing system, etc. By the 11th condition it is provided that when the purchaser desires, or is required, to change any existing tracks and substructures for the purpose of operating by electric power, etc., the city will lay down a permanent pavement in conjunction therewith upon the track allowance to be occupied by such new tracks, etc. This shall at first apply only to existing main lines, and thereafter to branch

lines or extension of main lines and branches as and when the city engineer may from time to time recommend, and the city council may direct and require. And condition 17 provides that in case the purchaser fails to establish and lay down any new line as aforesaid and to open the same for traffic or to extend the tracks and services on any street or streets as herein provided, the privilege of laying down such new lines or extensions in the street or portion of street so abandoned by the purchaser, may be granted by the council to any other person or company, and the purchaser shall in such case have no claim against the city for compensation.

The contention of defendants is, that, upon the true construction of their contract, it is optional with them to construct branch or new lines and extensions under condition 14, and that the only consequence of or penalty for their default is that provided by sec. 17, viz., that they are to be taken to have abandoned all right to construct and operate their railway on the particular street along which the branch or extension has been required to be made, and that the city may confer the privilege of doing so upon any one else.

The Court is asked to say whether this is the only remedy plaintiffs can claim in case of defendants' default. They do claim, as appears by the pleadings, other and much more effective remedies.

No point was made on the argument of the variation in the expression made use of in the [illegible] conditions; condition 11 speaking of "branch lines or extensions," and conditions 14, 15, and 17, of "new lines and extensions." I assume that they all mean and refer to the same thing.

It is unnecessary to refer in detail to the manner in which defendants were substituted for and now stand in the place of the individuals with whom plaintiffs first dealt in disposing of the franchise. This all appears in 55 Vict. ch. 99 (O.), and its various schedules, and defendants may be treated for the purposes of the case as having dealt with plaintiffs directly in the first instance.

What plaintiffs proposed to grant was the exclusive right for 20 years, upon the conditions and tender and by-law annexed to the agreement of 1st September, 1891, and made part and parcel thereof (5th recital and 12th clause of the agreement) to operate surface street railways within the city except certain specified parts thereof. The conditions (called also "the specification") were those upon which tenders were called for, and were made by defendants . . . and their tender upon which was accepted by plaintiffs. The tender, in my opinion, is an offer to do, perform, and fulfil what they may be "required" to do under the terms of the 14th condition; which is perhaps more accurately described as one of the stipulations or proposals shewing the nature and extent of the engagements into which the tenderer will be required to enter upon the acceptance of the tender, under the formal contract to be executed as required by the 45th condition. And

by the 12th clause of that contract the parties mutually and respectively covenant, promise, and agree with each other to carry into effect, observe, perform, and fulfil all the provisions and stipulations therein contained, and to be carried into effect, observed, performed, and fulfilled by them respectively. And by the 14th clause defendants covenant, promise, and agree with plaintiffs that they will fulfil all the conditions, stipulations, and undertakings in the agreement contained, it being understood that the reference to particular matters to be performed by the purchasers shall not diminish or limit the obligations of the agreement. I regard these clauses as containing an absolute covenant on defendants' part to do what may be required of them under the 14th condition and the 17th condition as providing no more than an optional or alternative remedy in the event of their *failure* to do so. Before defendants can be in default, plaintiffs must have incurred the expense of laying down a permanent pavement upon the track allowance for the proposed branch lines or extensions, and the remedy of conferring a franchise upon another company or individual to operate a railway thereon, without the power of doing so in connection with defendants' railway, would, in the circumstances, be of a most futile and ineffectual character, as is well pointed out by Anglin, J., in dealing with the subject.

Clause 46 of the conditions further provides that in case of neglect or failure on the part of defendants to perform any of the conditions of the agreement to be entered into in accordance with clause 45, the purchasers shall in each such case of failure pay to plaintiffs . . . $10,000 as liquidated damages and not as a penalty.

I think, therefore, that the 6th question is properly answered in the terms in which it is put, namely, that the privilege to plaintiffs to grant to another person or company, for failure of defendants to establish and lay down new lines and to open the same for traffic or to extend the tracks and services upon any street or streets, as provided by the agreement, is not the only remedy plaintiffs can claim.

Nothing more than this is decided by the answer.

The 2nd and 4th questions . . . may be considered together.

Paragraphs 6, 7, 8, 11 (a), and 12 of the statement of claim set forth the subjects with which these questions are concerned. Plaintiffs contend that they all come within what may be called the "speed and service" clauses of the conditions, and that they are matters which are to be or which may be determined upon, decided, and directed by their officers and themselves in the manner indicated in the questions, namely, by prescribing time-tables and routes and the time at which the use of open cars shall be discontinued in the autumn and resumed in the spring, and when the cars shall be provided with heating apparatus.

I pass over the 3rd question for the present, as it is one of the subjects of the cross-appeal, though much of what is said in disposing of the other two will apply to it.

One cannot read the contract between the parties without seeing how anxiously—I do not know how effectively—plaintiffs have attempted to provide in many respects for the control of their streets, and for the protection and convenience of the public. They were conferring upon defendants a valuable franchise, but there was no intention to give them a free hand to manage the railway as they pleased and to run it to suit their own ideas of what might be best for the citizens. Plaintiffs have, therefore, by clause 26 and other clauses, reserved a large control over the manner in which defendants are to manage and carry on their business as regards the accommodation of the public, and in the word "service" in the 26th clause have used a popular or business term, of, as I think, very wide meaning. Some of the meanings of the word, and those in which it is here employed, are found in the Century Dictionary: "That which is supplied or furnished; the act or means of supplying that which is in general demand, or of providing specific accommodation—said of transportation, or of railway or mail service." "Service stop—a stop made by a railway train at a regular time and place."

Having regard to the transfer arrangements which are provided for by clause 33, and which must be made with the approval of the City Engineer and "the indorsation of the Council," it appears to me that it is for the City Engineer, with the approval of the council, under the other clauses referred to, to determine, by schedule or time table, whichever may be the appropriate term, the times at which the cars shall be run over the whole railway system. There is no definition of the terms "main line," "branch," "route." Section 26 speaks of "the speed and service" necessary on each main line or branch. This is to be determined by the engineer and approved by the Council.

Section 27 deals with day cars. These are to commence running on all routes not later than 5.30 a.m., and to run until midnight. The power of the engineer is, with the approval of the City Council, to determine the intervals at which they are to run during the day as thus defined.

Section 28 deals with night cars. Here it is for the engineer and council to say on what routes and at what hours and intervals it is necessary that such cars shall be run.

It was strongly urged by defendants that the City Engineer and Council had no power to determine the particular route service to be furnished by them, taking the word "route" to indicate the sending of the same car over more than one main line on a continuous journey, e.g., the Yonge Street and College street route, the King and Bathurst Street route, the Belt Line route, etc., and that it was for defendants from time to time to determine such routes, and then for the Engineer and Council to determine the headway or interval of the cars which should run over them. With this, however, I do not agree. That a route service, in the sense I have mentioned, was contemplated by the agreement, is implied by the reference, in various parts of the instruments which compose it, to "curves,"

without which such a service would be impossible, and it is merely the continuance under the electric system of the practice which prevailed under the old horse-railway system on a smaller scale. The construction contended for would unduly restrict the meaning of the word "service" in the 26th clause, which is not limited to headway or interval service over the whole of any main line. It is comprehensive enough to include a service of cars over parts of two or more main lines or a main line and a branch, and clause 27 provides for the detail of the service as regards the intervals at which it shall be supplied.

The answer to the 2nd question, therefore, is, that it is for the City Engineer, with the approval of the City Council, to determine, decide upon, and direct what time-tables and routes shall be adopted and observed by defendants.

As regards the 4th question, I think that it also is answered by the application of the 26th clause. The use and discontinuance of the use of open cars and the period of the year during which closed cars shall be heated are all matters fairly embraced by the general term "service" as used in that condition. In this respect the question is properly answered in the terms of the judgment below.

Then as to the cross-appeal. The day and night cars are different classes of cars, running as such at different hours and different intervals, and the fare on the one is double that on the other. Clause 27, which deals with the former, does not say that day cars shall stop running at midnight, but that they shall "run until 12 o'clock midnight at such intervals as the City Engineer . . . may determine." And what clause 30 says is not that the fare shall be double after midnight, but that the fares on night cars shall be double the ordinary maximum high fare rates.

I think that clause 27 means no more than that the day cars shall not be sent out at or after midnight. When sent out, as they can only lawfully be sent out, before that hour, they must finish their route, otherwise the right or power to require them to run at intervals until 12 o'clock midnight would be useless for most practical purposes after 11.30 p.m. The word "run" refers to the period of starting, the lapse of the interval prescribed between the setting forth of one car and that of the next following car on the route. It does not refer to the journey of the cars over the route. There is something of the ludicrous in defendants' contention that when 12 o'clock arrives the car may be stopped, and that passengers who have paid on entering the car, and may have entered it for a journey over the whole route, may be required to leave it wherever it may then happen to be, however distant from their destination. I do not understand that clause 33, relating to "transfer arrangements," is intended to make provision for transfer from a day car to a night car, except in the same circumstances and for the same purpose as it is made from one day car to another, i.e., to enable a passenger arriving at a connecting point on a day car to transfer to a night car, if there should be no

day car there, without paying anything more for the journey. Probably by the exercise of a little common sense and forbearance, the clause might readily be utilized in framing the day and night car schedules.

I am, therefore, of opinion that the judgment below should be varied in this respect, and that the answer to the 3rd question should be, that cars which have been started before midnight, under the direction of the City Engineer approved by the Council, must finish the route on which they have so started, although in order to do so it may be necessary for them to be run after midnight.

Whether there is any obligation upon the City Engineer to give notice to defendants before determining the several details of service referred to in the questions submitted by the special case, is a question upon which we are not called on to express and do not express, any opinion. No doubt, it is only reasonable that this should be done, and that the action of the Engineer should be taken only after mutual discussion and consideration, but the point is not before us.

Lastly, as regards the 5th question submitted, assuming that the cross-appeal is competent though the question has not been answered, I am of opinion that it was properly dealt with by the learned Judge, and for the reason given by him, namely, that the point was not ripe for discussion. . . .

The judgment below will, therefore, be varied in the particulars above indicated.

XXII.

"AVENUE ROAD AND STOPS" ACTION.

Judgment of STREET, J.

[*8th December, 1905.*]

THE CORPORATION OF THE CITY OF TORONTO
v.
THE TORONTO RAILWAY COMPANY.

Action tried before me at the Toronto Non-jury Sittings, on 23rd November, 1905.

FULLERTON, K.C., MONTGOMERY & JOHNSTON, *for the plaintiffs.*

LAIDLAW, K.C., and W. NESBITT, K.C., *for the defendants.*

The action is brought to compel the defendants to establish and lay down a double line of Street Railway tracks on Avenue Road from a connection with the existing rails on Avenue Road northerly to Clinton Street, and to extend a street

car service on such street; also to compel the defendants to stop their cars on the request of passengers at certain street crossings where at present they refuse to stop; and for a declaration of the rights of the parties under the agreement between them upon the two matters above mentioned.

In the agreement between the plaintiffs and defendants set forth as a schedule to the Ontario Statute 55 Vic. chap. 99, sec. 14 of the award, conditions, tender and by-law referred to in the agreement and forming part of it is as follows:

"The purchaser will be required to establish and lay down new lines and to extend the tracks and street car service on such streets as may be from time to time recommended by the City Engineer and approved by the City Council within such period as may be fixed by by-law to be passed by a vote of two-thirds of all the members of said Council, and all such extensions and new lines shall be regulated by the same terms and conditions as relate to the existing system, and the right to operate the same shall terminate at the expiration of the term of this contract."

Pursuant to this section the City Engineer recommended that the defendants should be required to lay down a double line of tracks on Avenue Road, from a connection with the existing line thereon, northerly to Clinton Street, and to extend their street car service thereon; and on 10th April, 1905, the City Council passed their By-law No. 4520, and approved the Engineer's recommendation, and fixed the first day of June, 1905, as the date within which the said tracks were to be laid down: and the defendants were duly notified of the premises, but have refused to comply with the recommendation of the Engineer and the requirements of the by-law. They based their refusal in their pleadings, and upon the trial and argument of the case before me, upon the following grounds:—

1st. That section 14 above set out did not apply to the portion of Avenue Road over which they were required to lay down the new piece of track, because in 1891 when the agreement in question was entered into that portion of Avenue Road lay outside the City limits as they then existed, and was only brought within them during the present year 1905; and the agreement must be taken to refer only to the City of Toronto as it existed at the date of the agreement in 1891, and not to the City as enlarged by subsequent annexations or additions.

I think it is clear that the question whether the agreement of 1891 was to be construed as applying only to the City of Toronto as it then existed, or as applying also to streets formed upon land afterwards added to the City, was raised and passed upon by the Court of Appeal in a former action between the same parties, the judgment of the Court of Appeal in which is reported at 5 O. W. R. 130. The history of the property there in question detailed by the Chief Justice at pages 131-132-133, shews that it was not within the City limits at the date of the agreement, but was added to the City on 27th May, 1893, before the track was laid down upon it, and the express language of the Chief Justice, concurred in by the other

members of the Court, declares that the piece of track there in question is subject to the agreement of 1891, because that agreement covers not only the streets within the City at its date, but also covers those which shall be brought within it at any time during the currency of the agreement. This decision has been lately affirmed by the Privy Council.

The same question formed one of the subjects of a special case stated between the same parties, and was decided in the same way by Anglin, J., in a judgment delivered on 10th November, 1904, and reported in 9 O. L. R. 333, which has since been confirmed upon this point by the Court of Appeal.

I am bound, I think, to follow these decisions and to hold in favour of the plaintiffs upon this objection.

2nd. The defendants plead that they have no power to comply with the request of the plaintiffs to lay down their tracks upon the new portion of Avenue Road, because the plaintiffs have passed no by-law complying with the provisions of section 16 of 2 Edw. VII. chap. 27, entitled "An Act respecting Electric Railways" which provides that "No Municipal Council notwithstanding anything contained in 'The Electric Railway Act,' or any other Act to the contrary, shall pass a by-law authorizing any Electric Railway Company to lay out or construct its railway on, upon or along any public highway, road, street or lane," until notices have been given similar to those required by section 632 of the Municipal Act.

It is admitted that the by-law passed by the plaintiffs requiring the defendants to construct their line upon the new part of Avenue Road was passed without giving any such notices, but it is contended by the plaintiffs that the section relied on by the defendants does not apply.

In my opinion that section has no application here. The legislation relating to "street railways" even when they use electric power, and that relating to "electric railways" is contained in different Acts of the R. S. O., the former being governed by chap. 208, and the latter by chap. 209. The distinction between the two classes of railway seems to be pointed out by sub-sec. 6 of sec. 4 of chap. 209, which declares that that Act shall not apply to or include an electric railway wholly constructed and operated within the limits of any City . . . nor to any extension of such railway beyond such limits for a distance not exceeding a mile and a half; and by sub-sec. 7 of the same section, which declares that "the Street Railway Act" shall not apply to any Electric Railway Company to which "the Electric Railway Act" applies.

Section 16 of chap. 27 of 2 Edward VII., was intended, in my opinion, to apply to those electric railways only which come within chap. 209 of the R. S. O., and the defendants do not come within the provisions of that Act.

3rd. That the by-law requiring the defendants to make the Avenue Road extension was passed on 10th April, 1905, whereas the statute by which the annexation was finally completed was not passed until 25th May, 1905.

The proclamation of the Lieutenant-Governor annexing the territory which included the new Avenue Road was, however, issued on 3rd March, 1905, to take effect on 10th March, 1905. No objections to the validity of the proclamation were suggested. If any doubt existed as to the validity of any part of it it must have been with regard to the portions of it relating to assessment and taxation, and as to those the Act declares that the Lieutenant-Governor had the power which he has exercised. This objection therefore also fails.

4th. That the Court should refuse to order specific performance of an agreement to build and operate a street railway upon the authority of the principles laid down in the City of Kingston v. Kingston & Cataraqui Street Railway Company, 25 A. R. 462.

This objection would have been an extremely formidable one, but for the provisions of section 5 of chap. 102, 63 Vic. of the Ontario Legislature which provides that if the defendants neglect or fail to perform any of their obligations under the Act and agreement set forth in the Statute, 55 Vic. chap. 99, and an action is brought to compel performance, the Court before whom the action is tried shall notwithstanding any rule of law or practice to the contrary, enquire into the alleged breach, and in case a breach is found to have been committed shall make an order specifying what things shall be done by the defendants as a substantial compliance with the said Act and agreement, and that every such order shall be enforceable in the same manner and to the same extent as a mandamus granted by the Court.

This section was passed after the judgment of the Court of Appeal in the Kingston case above referred to, and was in my opinion plainly intended to prevent the defendants, if possible, from evading the obligations into which they had entered, as the Kingston Street Railway Company had been able to do. I am required by the section to make an order specifying what should be done by the defendants in order to constitute a substantial compliance with their agreement. Their agreement requires them under the circumstances, first to lay down the double line of rails required by the by-law in the manner and according to the requirements of their agreement with the City, and to connect this double line of rails with their existing lines on Avenue Road; and second, to extend the existing service of cars to the new line, and to operate it as part of their system. The form of the order may be settled before me if necessary so that it may comply with the section on specifying what is to be done.

5th. That the City Engineer was acting in a judicial capacity in the various matters which, under the agreement, can only be done upon his recommendation, and could therefore not act without notice to the parties, and without hearing full discussion.

In my opinion the terms of the Act do not make the Engineer an arbitrator, or confer judicial powers upon him. He is the executive officer of the plaintiffs, having control and superintendence of the streets of the City, and the

works in connection with them; he makes his recommendation to the City Council with regard to street railway matters as in all other matters in his department, and his recommendations may then be approved or rejected by that body.

6. The City Engineer for the time being, and not the City Engineer who held office when the agreement was made, is the person intended by the description "the City Engineer" in the Act and agreement.

7. The plaintiffs are entitled to enforce the provisions of section 14 of the award, conditions, tender and by-law notwithstanding the option given them by section 17 of the same instrument to grant to another person or company the right of laying down lines on streets upon which the defendants, after being duly required, have failed to do so.

These I think exhaust the objections raised by the defendants as defences to the plaintiffs' claim to have the defendants' lines extended to the new portion of Avenue Road, and I have overruled them all. The plaintiffs further ask that the defendants may be ordered to stop their cars on the request of passengers desiring to get on or off at certain specified cross streets and places recommended by the City Engineer, and approved by resolution of the City Council. The plaintiffs claim this right under the 26th section of the award, conditions, tender and by-law, which is as follows:—"The speed and service necessary on each main line, part of same, or branch, is to be determined by the City Engineer, and approved by the City Council."

Under section 39 of the same instrument it is provided that "cars shall only be stopped clear of cross streets, and midway between streets where distance exceeds 600 feet."

The defendants object to comply with the resolution of the City Council upon the following grounds:—

1st. That the regulation of the places at which the cars are to be stopped is not a matter coming within the 26th section, but is left to be determined by the defendants themselves, subject only to the restrictions of the 39th section. In other words that so long as they stop only at cross streets, and midway between streets only when the distance exceeds 600 feet, they may stop at such points only as they deem advisable.

In my opinion the regulation of the places at which cars are to stop to take on and let off passengers is part of the "service" of the cars of the defendants within the meaning of the 26th clause, and they may therefore be required subject to the limitations of section 39 to stop wherever the City Engineer and the City Council may agree in requiring them to do so.

2nd. That the City Engineer has not "determined," but only "recommended" that the defendants should be required to stop their cars at the points

in dispute. The words used by the Engineer in his report to the Council are "I beg to recommend," and his report was adopted by a resolution of the Council on the 25th April, 1905. I think it is only proper to assume that before the City Engineer "recommended" to the Council that the defendants should be required to stop their cars at the points named in his report, he had "determined" the point so far as he could. I therefore overrule this objection.

3rd. That the Council have not adopted the Engineer's report by by-law, but only by resolution, and that they could only act in this matter by by-law.

The 26th section, above quoted, only requires that the determination of the Engineer shall be approved by the Council. I am of opinion that this approval may be signified by resolution, and that a by-law was unnecessary.

Township of Pembroke v. Canada Central Railway, 3 O. R. 503.

Port Arthur v. Fort William, 25 A. R. 522, 527.

I think the plaintiffs are therefore upon this second branch of their claim entitled to an order that the defendants should comply with the Engineer's report, as to where they should stop, and restraining them from running cars except in accordance with such order.

And the defendants should pay the costs of the action.

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Toronto Railway Company

APPENDIX

CONTAINING EXPLANATORY NOTES AND REFERENCES TO STATUTES, JUDGMENTS OF COURTS, AND DECISIONS AND ORDERS OF THE ONTARIO RAILWAY AND MUNICIPAL BOARD

RELATING TO LITIGATION

BETWEEN

THE TORONTO RAILWAY COMPANY

AND

THE CORPORATION OF THE CITY OF TORONTO

From December 8th, 1905, to December 31st, 1908

Prepared by the City Solicitor

APPENDIX.

I.

The Statute 55 Vic. chap. 99 is supplemented by Ontario Statute, 8 Edward VII. chap. 112, sec. 1, declaring the true intent and meaning of the original Act.

II.

The agreement as to removal of snow, printed at page 45 of pamphlet, has been interpreted by the Ontario Railway Board, on the application of the City, by a judgment dated April 23rd, 1907, dismissing the application for an order to restrain the Company from depositing snow and ice on the streets without the permission of the City.

On the 22nd of January, 1908, the Court of Appeal dismissed the City's appeal against this judgment.

III.

The judgment of Anglin, J., at page 76, was, by the judgment of the Court of Appeal, on November 13th, 1905, printed at page 91, varied by declaring that the City had control of time-tables and routes, and also declaring that day cars starting on a route before midnight, must finish their routes, although this might require them to run after midnight. On appeal to the Supreme Court by the Company, the Court, by a judgment dated May 1st, 1906, varied the judgments in the Courts below as set forth in No. 1 hereafter, and on April 26th, 1907, the Privy Council varied the said judgments, as set forth in No. 3 hereafter.

IV.

The Company, on December 5th, 1905, petitioned the Court to set aside the judgment of Winchester, J., printed at page 83, which application has been argued and reserved.

V.

An appeal by the Company against the findings of Judge Snider in the "Penalties" action, printed at page 87, has been argued before Teetzel, J., and judgment reserved.

VI.

The judgment of Street, J., at page 98, in the "Avenue Road Extension and Stops" case, has been varied on appeals to the Court of Appeal and the Privy Council, as set forth in Nos. 2 and 3 hereafter.

Synopsis of Litigation between Toronto Railway Co. and City of Toronto, since Issue of Pamphlet, December 8th, 1905.

Omnibus Case.

1. On May 1st, 1906, the Supreme Court of Canada delivered judgment in the "Omnibus Case" varying the judgment of the Court of Appeal.

(*a*) By limiting the application of the agreement of September 1st, 1891, to the territory then within the limits of the City.

(*b*) By reversing the judgments of the Court of Appeal and of Mr. Justice Anglin, and declaring that the Company had the right to determine when open cars should be discontinued in the autumn and resumed in the spring, and when cars should be heated.

Avenue Road Extension and Stops.

2. On June 29th, 1906, the Court of Appeal delivered judgment dismissing the Company's appeal against the judgment of Street, J., on November 23rd, 1905, in the "Avenue Road and Stops" case.

3. The City appealed against the judgment of the Supreme Court in the [illegible]ase, and the Company appealed against the judgment of the Court of A[illegible] "Avenue Road and Stops" case, and the appeals were consolidated. and [illegible]th, 1907, the Judicial Committee of the Privy Council gave judgment on [illegible]solidated appeal, and declared:

(*a*) That the Company had the right to determine what new lines should be established;

(*b*) That the Agreement of September 1st, 1891, applied only to the City, as constituted at that date:

(*c*) That the Company had the right to fix stopping places;

(*d*) That should the Company fail to establish new lines where the City desired them, the only remedy the City had was to grant that privilege to another Company.

Car Barns Case.

4. On June 21st, 1906, Meredith, C.J., delivered judgment in the "Car Barns" case, dismissing Company's action to restrain the City expropriating for park purposes lands at the corner of Bathurst Street and Vermont Avenue.

5. On October 19th, 1906, a Divisional Court (Boyd, C., Magee, J., and Mabee, J.), dismissed Company's appeal from judgment of trial Judge in "Car Barns" case.

6. On September 16th, 1907, Company discontinued appeal by company to Court of Appeal in "Car Barns" case.

Electrolysis.

7. On December 20th, 1906, an action was commenced against the Railway Company for damages to the water pipes of the City by electrolysis. A great deal of expert evidence has been collected, and the case is ready for trial, and may be brought on by either party on one month's notice.

Penalties.

8. Thirteen writs have been issued claiming daily penalties of $100 per day, amounting in all to $49,500, from December 6th, 1905, to April 14th, 1907.

Pavements on Track Allowances.

9. On May 10th, 1906, the Railway Company brought an action against the City for a declaratory judgment defining the liability of the Company and City as to the construction and maintenance of the pavements on the track allowances, and claiming damages to their rolling stock. The action has not been pressed to trial.

APPLICATIONS TO ONTARIO RAILWAY AND MUNICIPAL BOARD.

Lavatories, etc.

1. On December 1st, 1906, an application was filed before the Railway Board by the Toronto Railway Employees' Union and the City, for an order requiring the Toronto Railway Company to maintain suitable urinals, lavatories, drinking fountains and other conveniences for the use of employees of the Company, and the public, and for a direction as to the proportion of cost to be borne by the Company and the City.

On January 18th, 1907, the Board of Control directed that the City Solicitor ask the Railway Board that such lavatories, etc., be ordered as are necessary for use of railway employees only, and that City be left in a position to erect independent places for the use of the public.

The Company, after conferences with the Engineer and Medical Health Officer, has erected several, and obtained an adjournment sine die to be taken up as may be required after readjustment of Company's routes. No formal order has been yet made.

Bathurst, Arthur and Winchester Routes.

2. On January 23rd, 1907, The Ontario Railway and Municipal Board, on its own motion, made an order enjoining the City interfering with the Company

in changing its routes as to Bathurst Street, Arthur Street, and Winchester Street, and directing the Company to restore the service on the streets in question as it was when interrupted by the City. An application was then pending by the City to compel the Company to operate the routes which the Company had discontinued. On January 30th, 1907, by direction of the Board of Control, an application was filed asking the Railway Board to vary its order of January 23rd. Owing to the decision of the Privy Council placing the regulation of routes in the hands of the Company, this application has not been pressed to a hearing.

Snow Removal.

3. On April 23rd, 1907, on the application of the City for an order restraining the Company from depositing ice and snow upon the streets without the permission of the City, judgment was given dismissing the application, and on an appeal by the City to the Court of Appeal, that Court on January 22nd, 1908, gave judgment dismissing the appeal.

Assessment Appeal, 1907.

4. On April 29th, 1908, The Ontario Railway and Municipal Board made an order on the appeal by the Company from the assessment upon their storage plants confirmed by the Court of Revision, confirming a settlement arrived at between the parties.

Fenders.

5. On May 6th, 1908, on the application of the City, an order was made by the Ontario Railway Board that the Company equip their whole system with an approved fender within six months.

Overcrowding.

6. On May 17th, 1907, The Railway Board, on the City's application, made an order that the Company was forthwith to build 100 new cars, and put the same into commission so soon as tracks could be laid to accommodate them, and from ten to fifteen miles of single track on streets to be agreed upon between the Company and City.

Front Vestibules.

7. On May 17th, 1907, the Railway Board made an order, on the City's application, that the front platforms of all cars used by the Toronto Railway Company shall be enclosed on or before November 1st, 1907, to protect the motormen by a door fastened with a spring lock on the inside.

Richmond Street Curves.

8. On May 23rd, 1907, The Ontario Railway and Municipal Board made an order upon the application of the Company, restraining the City from interfering

with the Company in laying down curves at the corner of Yonge and Richmond Streets. On September 23rd, 1907, the Court of Appeal gave leave to appeal against this order. On October 15th, 1907, further proceedings in the appeal were discontinued.

Open Cars and Heating Cars.

9. On November 5th, 1907, under instructions from the Board of Control, an application was filed by the City for an order from the Ontario Railway Board as to the use of open cars, and heating of closed cars, and on November 16th, 1907, further proceedings were discontinued on instructions from the Board of Control.

Rear Vestibules.

10. On June 2nd, 1908, Mr. Gibbons, the Business Agent of the Toronto Railway Employees' Union, filed an application to the Railway Board for an order directing the rear vestibules of closed cars to be enclosed. The City Solicitor was directed by the Board of Control to assist on this application. No appointment has been taken for the hearing, pending the action of the Company as to the adoption of the pay-as-you-enter system.

Riding on Front Seats.

11. On June 25th, 1908, the Railway Board, on its own motion, considered question of preventing passengers riding on front seats of open cars. A large number of delegates from various places gave their views and the Board reserved judgment.

Height of Steps.

12. On the instructions of the Board of Control, the City has taken charge of an application to the Railway Board by Dr. Helen MacMurchy for a regulation fixing the height of steps of street and electric cars operated by companies under the jurisdiction of the Railway Board. The Board has dismissed the application except as to West Toronto, London and Toronto. The application has been partially heard.

Assessment Appeal, 1908.

13. On December 21st, 1908, The Ontario Railway and Municipal Board made an order on the appeal by the Company from the assessment upon their storage plants, confirmed by the Court of Revision, confirming a settlement arrived at between the parties.